

THE
STATUS OF THE NEGRO
IN VIRGINIA

DURING THE COLONIAL PERIOD.

BY

GERALD MONTGOMERY WEST, M.A.

Submitted as one of the Requirements for the
Degree of Doctor of Philosophy in the
School of Political Science,
Columbia College.

WILLIAM R. JENKINS,
851 & 853 SIXTH AVENUE,
NEW YORK.

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THE STATUS OF THE NEGRO IN VIRGINIA DURING THE COLONIAL PERIOD.

CHAPTER I.

FUNDAMENTAL LAW OF THE COLONIES.

"About the last of August came in a Dutch man of warre that sold us twenty negars," wrote John Rolfe in 1619¹.

Thus, briefly and incidentally, was chronicled an event fraught with such momentous results—the introduction of slavery into the Anglo-American colonies.

In order to determine the legal condition of the negro at this, his first and enforced appearance in those colonies, as well as subsequently, it will be necessary to examine the various charters of the colonies and the English common and statute law.

§ I. COLONIAL CHARTERS.

It is a matter of common knowledge that all English colonies planted in America between the thirty-fourth and forty-fifth parallels of north latitude, with the possible exception, for a short time, of the Puritan settlement, made at Plymouth in 1620, were under charters granted by the crown of England which fixed and defined the limits of their territory and the extent of their powers of self-government, and which subsequently at various times were altered and amended.

The first charter² was that granted to Sir Walter Raleigh in 1584, and was a general commission to make settlements when and where he might be able within certain limits, and granted to him, his heirs and assigns, the right to make all statutes,

¹ Jefferson's Reports, Va., p. 119, Note. English Scholar's Library, Capt. John Smith's Works, 1608-31, p. 541. (1620 A. D., Kent's Commentaries, Vol. II., p. 266.)

² Poore's Constitutions, p. 1381.

laws and ordinances for the government of any colony he or his heirs and assigns might found; "So ALWAYS as the said statutes, lawes and ordinances may be, so neere as conveniently may be, agreeable to the forme of the lawes, statutes, government or policie of England."

In 1606 a new charter was issued called the First Charter of Virginia.¹ Under this the colonies were to be governed "according to such laws, ordinances and instruments as shall be, in that behalf, given and signed with our (the King's) hand or signmanual, and pass under the Privy Seal of our Realme of England." This was followed, in 1609, by the second charter of Virginia,² which granted to the colonists the right to punish, pardon and rule, "according to such orders, ordinances, constitutions, directions and instructions as by our said council as aforesaid, shall be established; and in defect thereof, in case of necessity, according to the good discretion of the said governor and officers respectively as well in cases capital and criminal, as civil both marine and other, so ALWAYS as the said statutes, ordinances, and proceedings, as near as conveniently may be, be agreeable to the laws, statutes, government and policy of this our Realm of England."

This, again, was succeeded in 1611-12 by the third and last charter of Virginia,³ which granted to the "Four Great and General Courts of the Council and Company of Adventurers for Virginia" the "full power and authority to ordain and make such laws and ordinances, for the good and welfare of the said Plantation, as to them from time to time, shall be thought requisite and meet; so ALWAYS as the same be not contrary to the laws and statutes of this our Realm of England."

All the other charters had the same provisions, with, in some cases, slight modification of expression. Thus the charter to the New England Company in 1620,⁴ granted to the council of the company "full power and authority . . . to make, ordaine and establish all manner of orders, laws, directions, constitutions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the govern-

¹ Poore's Constitutions, p. 1890.

² *Ibid.*, p. 1901.

³ *Ibid.*, p. 1905.

⁴ *Ibid.*, p. 925.

ment of the said colony and plantation, SO ALWAYS, as the same be not contrary to the laws and statutes of this our Realm of England." The action of all officers of the colony was limited in the same manner. The first charter of the Massachusetts Bay Colony,¹ in 1629, grants to the colony assembled with the Governor or Lieutenant Governor, the same powers, "SOE AS such lawes and ordinances be not contrarie or repugnante to the lawes and statutes of this our Realme of England." The second charter of Massachusetts Bay, 1691,² grants similar powers, "so as the same be not repugnant or contrary to the laws of this our Realm of England." The Explanatory Charter of Massachusetts Bay,³ 1726, makes no alteration in this clause.

The grant of New Hampshire,⁴ in 1629, empowered "Captain John Mason, his heirs and assigns, to establish a government which shall have power to govern agreeably, as near as may be, to the laws and customs of the Realm of England." The grant to New Hampshire,⁵ made in 1635, gave full judicial and administrative authority, "according to the laws of England as neere as may bee." By the royal commission⁶ appointed in 1680, the New Hampshire colony was to be governed by "the judgement of the Council, sitting as a Court of Record, to be as nearly in accordance with the laws and statutes of this our Realm of England, as the present state and condition of our subjects inhabiting within the limits aforesaid, and the circumstances of the place will admit." The General Assembly⁷ was empowered to make laws subject to the pleasure of the King to confirm, modify or disallow them.

The charter of Maryland,⁸ 1632, granted to Lord Baltimore the power to make all laws, ordinances, &c., "*Ita tamen quod leges prædictæ sint rationi consonæ et non sint repugnantes nec contrariæ sed—quoad convenienter fieri poterit—consentaneæ legibus, statutis, consuetudinibus ac juribus hujus Regni nostri Angliæ.*" The charter of Connecticut,⁹ 1662, empowered the

¹ Poore's Constitutions, p. 937.

² Ibid. p. 951.

³ Ibid. p. 954.

⁴ Ibid. p. 1272.

⁵ Ibid. p. 1274.

⁶ Ibid. p. 1276.

⁷ Ibid. p. 1278.

⁸ Ibid. p. 813.

⁹ Ibid. p. 255.

Governor or Deputy-Governor and six assistants, "to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, ordinances, directions and institutions, not contrary to the law of this Realm of England." The grant of the Province of Maine,¹ 1639, placed all law-making power in the hands of Sir Ferdinando Gorges, his heirs and assigns, and also in the Assembly of Freeholders, "so as the same ordinances be reasonable and not repugnant nor contrary, but as neere as may bee, agreeable to the laws and statutes of our Kingdom of England." The grants of Maine in 1664 and 1674 to the Duke of York,² were restricted in the same way, "SO ALWAYS as the same (laws) be not contrary to the laws and statutes of this our Realm of England, but as neere as may be agreeable thereunto." By the Patent³ of 1643, Providence Plantation received full power to make all laws and ordinances; "PROVIDED NEVERTHELESS, that the said lawes, constitutions and punishments, for the civil government of the said plantation be conformable to the laws of England, as far as the nature and constitution of the place will permit." The charter of Rhode Island and Providence Plantation,⁴ 1663, gave the Governor and assistants the same power, "SO AS such laws, ordinances and constitutions, so made, be not contrary or repugnant unto, but as near as may be agreeable to the laws of our Realm of England, considering the nature and constitution of the place and the people there." The charter of Pennsylvannia, granted by Charles II. to William Penn⁵ in 1682, confers the same powers subject to the same limitations. When, in 1701, Pennsylvania and Delaware were separated, Penn confirmed to each of them respectively, all the liberties and privileges granted jointly to them in this charter "any laws, or customs of the Government or General Assembly to the contrary, notwithstanding."⁶ Finally the charter of Georgia,⁷ granted in 1632, gave to the Corporation assembled for that purpose, the power to "form and prepare laws, statutes, and ordinances, fit and necessary

¹ Poore's Constitutions, p. 777.

² Ibid, p. 784.

³ Ibid, p. 1595.

⁴ Ibid, p. 1598.

⁵ Colonial Records, Vol. I., Introductory Documents, p. ix.

⁶ Poore's Constitutions, pp. 1540 and 273.

⁷ Ibid, p. 374.

for and concerning the government of the said colony, and not repugnant to the laws and statutes of England."

The Carolina charters¹ of 1663 and 1665 vested in the proprietors of the province, with the consent of the free men, the right to make all laws, ordinances, &c., "PROVIDED NEVERTHELESS, that said laws be consonant to reason and, as near as may be conveniently, agreeable to the laws and customs of this our Realm of England." The "Fundamental Constitutions" of Carolina, 1669, drawn up by John Locke, was but partly put into operation and was finally repealed in 1693. In this we find the first and only allusion to slaves or slavery. *Section 107*² of this constitution says, "Since charity obliges us to wish well to the souls of all men, and religion ought to alter nothing in any man's civil estate or right, it shall be lawful for slaves, as well as others, to enter themselves, and be of what church or profession any of them shall think best, and, therefore, be as fully members as any freemen. But yet no slave shall hereby be exempted from the civil dominion his master hath over him, but in all things in the same state and condition he was in before." *Section 110*³ says, "Every freeman of Carolina shall have absolute power and authority over his negro slaves of what opinion or religion soever."

In order to encourage trade and immigration, regulations of a more or less restrictive nature were incorporated in all the charters. The provision in Penn's charter on this head is common to them all in spirit, if not in language. "AND FURTHERMORE,⁴ that our subjects may be thus rather encouraged to undertake this expedition with ready and cheerful minds; KNOW YE that we of our special grace, certain knowledge, and mere motion, do give and grant by virtue of these presents as well unto the said William Penn, and his heirs, as to all others who from time to time repair into the said country, with a purpose to inhabit there, or to trade with the natives of said country, full license to trade and freight in any ports whatsoever of us, our heirs and successors, according to the laws made or to be made within our Kingdom of England, and into

¹ Poore's Constitutions, pp. 1382 and 1384.

² Ibid, p. 1407.

³ Ibid, p. 1408.

⁴ Colonial Records, Vol. I., Introductory Documents, p. xviii.

the said country by them, their servants and assigns, to transport all and singular their wares, goods and merchandise, as likewise, all sorts of grain whatsoever, and all other things whatsoever necessary for food or clothing, not prohibited by the laws and statutes of our Kingdom and Dominions, to be carried out of the said Kingdom without any let or molestation of us, our heirs and successors, or of any the officers of us, our heirs and successors," the right to lay duties only excepted.

§ 2. VILLEINAGE.

Examination of the charters shows that in none of the colonies was there any sanction of slavery, unless it could be shown that slavery existed in England or was permissible by its laws.

The only slavery or approach to slavery in England after the Norman conquest, was the system of villeinage. The villeins were divided into two classes, villeins regardant, that is annexed to the land or manor, and villeins in gross, or at large, that is annexed to the person of the lord and transferable by deed from one owner to another.¹ Bracton says of villeins, "*ille qui tenet in villenagio sive liber sive servus, faciet de villenagio quicquid ei præceptum fuerit, nec scire debeat sero quid facere debeat in crastino, et semper tenebitur ad incerta.*"² The villein was excepted from Magna Charta, for "*nullus liber homo capiatur vel imprisonetur.*"³ Nevertheless, the villein was not a slave. The law protected him, as the King's subject, against any severe or permanent injury by his lord. The lord might neither kill nor maim him. For the killing or maiming of the villein and for the murder of his ancestor there was an action against his lord.⁴ The lord was also subject to an indictment in such cases.⁵ In an action he, the villein, was answerable to all men and all men to him, and with respect to any other than

¹ Litt. S. 181.

² Bracton, l. 4, c. 28, ¶ 5.

³ Cotton's Posthuma, p. 223; Magna Charta, § 39; Stubb's Select Charters, 301.

⁴ Litt. S. 189, 194.

⁵ Ibid, S. 194.

his master he was as a freeman.¹ The villein might be manumitted, and so eager was the law on the part of liberty that it caught at every opportunity to presume manumission. Thus, where a lord gave his villein a bond, an annuity, or estate in fee, for life, or for a term of years, he was held to have freed him.² So also if he brought an action against him,³ for these acts were considered to be inconsistent with servitude. Villeinage was also divided into pure, "*purum villenagium*," and privileged, "*villenagium privilegiotum*," or "*socagium villanum*," the former was base and uncertain as to quality and quantity, the latter was base but certain. "*Villenagiorum aliud purum, aliud privilegiotum.....Qui tenet in (puro) villenagio faciet.....quicquid ei praeceptum fuerit.....et hujusmodi villani sokmanni.....villana autem faciunt servitia, sed certa, et determinata.*"⁴ Villeins gradually changed into tenants by Copy of Court Roll,⁵ copyholders, so that it was said by Sir Thomas Smith, Secretary to Edward VI., that in his time he knew of no villeins in gross throughout the Kingdom, and villeins regardant were only held by ecclesiastical corporations.⁶ Tenure in villeinage was practically abolished by a statute of Charles II.⁷ The last recorded case of villeinage regardant being in the fifteenth year of King James I. while the last "concession" of villeinage was, says Lord Mansfield, in the nineteenth year of King Henry VI.⁸

Thus it appears that villeinage in gross, the nearest approach to slavery, had disappeared from England one hundred and fifty years before the introduction of the first negroes into the Colonies, and villeinage regardant had been practically merged into copyhold, neither having been actual slavery, for villeinage and not slavery was legal in England.⁹ So it would appear that as slavery was not permitted by the law of England,¹⁰ and as the colonies were forbidden to pass any laws

¹ Litt. S. 189.

² Ibid, 204, 205, 206.

³ Ibid, 208.

⁴ Bracton, l. 4., c. 28, ¶ 5.

⁵ 2 Blackstone, *95.

⁶ 2 Ibid, *96.

⁷ 12, Charles II., Chap. xxiv.

⁸ Somerset's Case, Lofft's Reports, 1.

⁹ Holt, C. J., 5 Mod. Rep., 182.

¹⁰ 2 Lev., 201; 3, Ibid, 336; 2 Salk, 666; 5 Mod. Rep., 182; 2 Raym, 1274, Lofft's Reports, 1.

or do any act not in accordance with the law of England, and as the introduction of slaves into the colonies was not authorized by any laws then existing, nor, as subsequently, by royal permission, therefore these negroes of 1619, at least, were legally freemen, and might have obtained their liberty by habeas corpus proceedings.

Slavery was derived from and entirely consonant with the civil law.¹ The introduction into England of equity, which was influenced largely by the "*Corpus Juris Civilis*," was jealously opposed by the Commons and by the Common Law Courts in the reigns of Richard II, Henry IV, and Henry VI, but was upheld by the Crown. In the reign of James I, a further attempt was made by Lord Coke to prevent the interference of the Chancellors, but again the matter was decided by the King in favour of Equity Jurisdiction.² Therefore any rules of law looking to the establishment of slavery such as was permitted by the civil law would be, and were, doubly obnoxious, even though introduced by statute. For example, in the Reign of Edward VI, idle vagabonds were by statute reduced to absolute slavery,³ but so intolerable was this to Englishmen's ideas of justice and right, even in the case of the most abandoned rogues, that within two years the statute was repealed.⁴

§ 3. ENGLISH LAWS.

On examining the English cases as to the rights of masters over the persons of their slaves while in England, we find a conflict of opinions. The earlier cases generally holding that such rights continued. These decisions were actually enforced on various grounds. The cases were usually actions for trover, the negroes having run away or having been taken away from their masters. The first of these was in the twenty-ninth year of Charles II. Here the action was sustained on the ground of the custom of merchants in the Colonies.⁵ In the next case,

¹ 20 Johns. Rep., 1.

² Earl of Oxford's Case, 1 Ch. Rep. 1; 2 Leading Case in Eq., 504, (601; 4th English Ed.)

³ 1 Ed., VI., Chap. III.

⁴ 3, and 4 Ed. VI., Chap. xvi.

⁵ Butts v. Penny, 2 Lev., 201.

in the fourth year of William and Mary, the court was of opinion that trover would not lie, "though it seemed to think that in trespass quare captivum suum cepit the plaintiff might give in evidence that the party was his negro and he bought him:"¹ while in the fifth year of William and Mary it was held that the negro might be a slave, "because negroes are heathens," and trover would therefore lie.² In the seventh year of William and Mary it was declared that while slavery was not legal in England, yet the Colonies might make laws establishing it as a local custom, such as prevailed in some parts of England, for example, Stanneries and Gavelkind.³ It was held in the Michaelmas Term of the fourth year of Queen Anne,⁴ and also in the Easter Term following that trover would not lie in such cases.⁵ In the twenty-second year of George II it was again held that trover would lie. Finally in the Easter term of the twelfth year of George III occurred the celebrated case of James Somersett.⁶ James Somersett having been made a slave in Africa, was sold there and was then brought to Virginia, where he was again sold and his master brought him to England. There he made his escape, but was recaptured by his master and confined upon the ship of a Captain Knowles. On application, Lord Mansfield issued a writ of Habeas Corpus, and the return not being in the opinion of the Court sufficient, the negro was released. In his decision Lord Mansfield said: "The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only positive law, which preserves its force long after reasons, occasion, and time itself, from which it was created, is erased from memory. It is so odious that nothing can be suffered to support it, but positive law. Whatever inconveniences therefore may follow from a decision, I cannot say this case is allowed or approved by the laws of England, and therefore the black must be discharged." This was the determining opinion, and therefore Blackstone says, referring

¹ Chambers v. Walkhouse, 3 Lev., 336.

² 1 Lord Ray. 147.

³ 5 Mod. Rep., 182.

⁴ Smith v. Brown & Cooper, 2 Salk, 666; Smith v. Gould, 2 Ibid, 666.

⁵ Smith v. Gould, 2 Raym, 1274.

⁶ Loft's Report, 1.

to the doctrine that baptism ipso facto conferred freedom :
 “ The law of England acts upon general and extensive principles ; it gives liberty, rightly understood, that is, protection to a Jew, a Turk, as well as to those who profess the true religion of Christ ; and it will not dissolve a civil obligation between master and servant, on account of the alteration of faith in either of the parties, but the slave is entitled to the same protection in England before, as after, baptism ; and whatever service the heathen negro owed of right to his American master, by general, not by local law, the same, whatever it be, is he bound to render when brought to England and made a christian.”¹

Sir John Hawkins was the first English slave-trader. He introduced the traffic in 1562 ; the slaves being carried to and sold in the West Indies. The trade was fostered by the English Government. It having been represented to Charles the Second that the American Colonies required more labourers than could safely be spared from the population of England, he invited his subjects to subscribe to a joint stock company, to supply negroes to the Colonies. This trade and the various companies of Englishmen carrying it on were frequently recognized by English statutes.² The last statute, entitled “ An Act for the Extending and Improving the Trade to Africa,” read as follows : “ WHEREAS, the trade to and from Africa is very advantageous to Great Britain and necessary for the supplying the Plantations and Colonies thereunto belonging with a sufficient number of negroes at reasonable rates ; and for that purpose the trade ought to be free and open to all His Majesty’s subjects ; Therefore, be it enacted, &c.”

“ But it shall be lawful for the said committee to carry on or cause to be carried on or exported from Africa any Negroes or other goods, &c.” § 20.

“ AND BE IT ENACTED by the authority aforesaid, That it shall and may be lawful for any of His Majesty’s subjects trading to Africa, for the security of their goods or slaves, to erect houses and warehouses under the protection of the said forts, &c.” § 28.

¹ 1 Black., *425

² 8 Wm. III., Chap. i ; 9 and 10, Wm. III., Chap. xxvi ; 23 Geo. II., Chap. xxxi ; 24 Geo. II., Chap. xlix ; 25 Geo. II., Chap. xl ; 29 Geo. II., Chap. xxxi.

"AND BE IT FURTHER ENACTED, by the authority aforesaid, that no commanders or masters of any ship trading to Africa, shall by fraud, force or violence, or by any other indirect practice whatever, take on board, or carry away from the coast of Africa, any negro or native of the said country, or commit or suffer to be committed, any violence on the natives to the prejudice of the said trade." § 29.

In "An Act for the Encouragement of Seamen, and the More Speedy and Effectual Manning His Majesty's Navy,"¹ it was declared that "WHEREAS good and necessary laws have been made and are still in force within several of His Majesty's Colonies or Plantations in America for the preventing the carrying off from the said Colonies or Plantations any servant or slave, without the consent of the owner, or the carrying off from thence of any other person or persons whatsoever, &c."

In 1732 was passed "An Act for the More Easy Recovery of Debts in His Majesty's Plantations and Colonies in America."² The fourth section of this act was as follows: "AND BE IT FURTHER ENACTED by the authority aforesaid, That from and after the said twenty-ninth (29) day of September, seventeen hundred and thirty-two (1732), the houses, lands, negroes and other hereditaments and real estates, situate and being within any of the said Plantations belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands of what nature or kind so ever, owing by any such person to His Majesty or any of his subjects, and shall and may be assets for the satisfaction thereof, in like manner as real estates are by the law of England liable to the satisfaction of debts due by Bond or other specialty, and shall be subject to the like Remedies, Proceedings and Process in any court of law or Equity, in any of the said Plantations respectively, for seizing, extending, selling or disposing of any such houses, lands, negroes and other hereditaments and real estates towards the satisfaction of such debts, dues and demands, and in like manner as personal estates in any of the said plantations are seized, extended, sold or disposed of for the satisfaction of debts."

¹ 6 Anne. Chap. xxxvii, § 18; 29 Geo. II., Chap. xxxiv, § 31.

² 5 Geo. II., Chap. vii. § 4.

Thus, practically at least, in and after 1678, slavery was recognized in the Colonies both by statute and by common law decisions. But until that time it would seem to have been illegal, unless it could be held to have arisen by prescription, and such an idea would apparently be controverted by the decision of Lord Mansfield.¹ We are therefore compelled to the opinion that, though practiced, it *was* illegal.

¹ Loft's Reports, 1.

CHAPTER II.

COLONIAL LAWS.

This period is divided, by the revision of the laws which took place in 1748, into two unequal parts, viz.: 1720 to 1748, and 1748 to 1775. The great confusion into which the laws had fallen, through the inharmonious action of successive legislatures, was the cause of this change. In some instances, notably in the laws regulating property in slaves, there was such confusion and contradiction that it was impossible to tell by what tenure a man held his slaves, and this great uncertainty opened wide the door to fraud of all kinds until business was almost brought to a standstill.

In 1745 an act¹ for the revision of the laws of the colonies was passed. The commission which had been appointed reported in 1748. All the old legislation was wiped out and everything began anew. The revised acts of 1748 were not to go into effect until the tenth of June 1751. They were published at first as enacted by the Colonial Assembly, without waiting for the royal assent. Certain of them, about ten in number, did not meet with the royal approval and were repealed by proclamation of the Governor at the King's command. Great indignation was expressed throughout the colony, and the constitutionality of the repeal was strongly questioned by the Governor and Assembly,² but the veto was enforced and a new edition of the revised laws was published in 1762 with the repealed acts omitted.

§ 1. THE IMPORTATION OF NEGROES INTO VIRGINIA.

(A) 1620-1748. As has already been stated, although negroes had been imported to *Spanish* America by the Spaniards anterior to 1505, and at later periods by others, including English adventurers, among which latter in bad preëminence was Sir John Hawkins, yet not until a "dutch man of warre" driven by stress of weather put into James

¹ Henning, Vol. V., Laws 1745, Chap. iv.

² Ibid, Preface, pp. 4 and 5.

Town harbour was slavery introduced into the *Anglo-American Colonies*. The exact date, as we have seen is in dispute; but it is a strange fact and worthy of more than the passing notice it has received, that the same year and the same spot, that saw the introduction of that "foul blot" also witnessed the inauguration, on American soil, of those free institutions¹ of which the Anglo-Saxon race so proudly and justly boasts. Then began the "irrepressible conflict" which was to culminate two and a half centuries later in one of the most appalling political cataclysms the world has even witnessed.

We find no reference to the slave trade, and indeed little to the negro, after his first introduction, until 1659, when a law, evidently for the purpose of encouraging the importation of negroes, was passed, and here again we meet with the Dutch. This act² granted free trade to all people in amity with England "ALLWAIES PROVIDED that if the said Dutch or other foreigners shall import any negro slaves, then the said Dutch or others shall : for the tobacco really produced by the said negroes, pay only the impost of two shillings per hogshead, the like being paid by our own nation." In 1690 we find a Colonial political economist putting forth a proposition to benefit the world by "making two blades of grass grow where one had grown before," by increasing the slave trade. The proposition was that the cultivation of Brazilian tobacco should be fostered, as more slaves could be bought with it on the Guinea coast than with Virginia tobacco.³ In the next year there is an entry that the slave cargo of a wrecked ship was seized by the customs officers, according to the law, and sold by them.⁴ In 1696 we find the first law taxing the importation of slaves. A tax of twenty shillings was levied on all negroes imported, the duty to be paid before the negroes were landed under penalty of forfeiture.⁵ The next law granted to persons exporting negroes six weeks after their entry, a drawback on the duty paid. This law was passed in

¹ In the same year in which the landing of slaves occurred, the colony received the right of self-government. Vide, *English Scholars' Library*, Capt. John Smith's Works (1608-1631), p. 541.

² Henning, *State of Va.*, Vol. I., Chap. xvi, p. 540.

³ *Calender of State Papers of Va.*, Vol. I., p. 26.

⁴ *Ibid.*

⁵ Henning, *Statutes*, Vol. III., Chap. xli, p. 193.

1701.¹ The Act of 1696 having expired, it was revived by chapter four of the Act of 1702 to be in force for one year.² It was again revived by the Act of 1705 laying a duty of twenty shillings on negro or other slaves imported, the duty to be paid before they were disembarked, and allowing the same drawback if they were exported within six weeks after their entry.³ This was repealed by chapter twenty-six of this same Act by which an import duty of six pence per head was imposed.⁴ By a later chapter of this Act it was required that slaves should be entered at the regular ports of entry after the twenty-fifth of December 1708, under penalty of forfeiture, and the sale of anything on shipboard but servants, slaves and salt, was forbidden.⁵ In 1710 a Committee of the House of Burgesses reported in favour of a bill to lay a duty on negroes and liquors,⁶ and in consequence of that report a poll tax of six pence was laid on all passengers, servants and slaves debarking from any ship.⁷ In 1712 the Act of 1705 laying a duty of twenty shillings on slaves was revived.⁸ In 1715 there is a record of a rather curious transaction. It was an agreement between Governor Spotswood of Virginia for the Governor of South Carolina, on the one hand, and William Dandridge on the other, to charter a vessel to carry men to South Carolina and bring back as many slaves as possible.⁹ In 1723 an import duty¹⁰ was laid on negroes and slaves, but this was repealed by proclamation on October twenty-seventh of the following year in obedience to a decision of the English Privy Council. The Calender of State Papers of Virginia contains a copy of this proclamation. It was issued on the report of the Commissioners of Trade and Plantations that the English Slave Trade from which the Crown received a large revenue was greatly injured by the imposition of the import duty. The proclamation¹¹ was as follows:

¹ Henning, Statutes, Vol. III., Chap. v, p. 213.

² Ibid, p. 225.

³ Ibid, Chap. I, p. 233.

⁴ Ibid, p. 344.

⁵ Ibid, Chap. xli, § 11, p. 401.

⁶ Calender of State Papers, Vol. I., p. 144.

⁷ Henning, Statutes, Vol. III., Chap. v, p. 490.

⁸ Ibid, Vol. IV., Chap. iv and v; pp. 28, 29.

⁹ Calender of State Papers, Vol. I., p. 182.

¹⁰ Henning, Statutes, Vol. IV., Chap. i, p. 118.

¹¹ Calender of State Papers, Vol. I., p. 206.

“ At the Council Chamber,
White hall, the 17 day of April, 1724.

PRESENT. LORD PRESIDENT EARL OF WESTMORELAND, LORD VISCOUNT TOWNSHAND, LORD BISHOP OF LONDON, LORD CARTERET, MR. WALPOLE, MASTER OF THE ROLLS.	BY a Committee of the Lords of His Majesty's Most Honorable Privy Council. In obedience to an order in council of the 21 February last, referring to the Committee a representation of the Lord's Commissioners of Trade and Plantations re- lating to Your Majesty's dis- allowance of an act Passed in the Colony of Virginia in 1723, entituled 'An Act for Laying a Duty on Liquors and Slaves.' Their Lordships this day took the same into consideration and do find that three acts of the like kind were formerly passed in that colony laying a duty of £5 per head on all negroes imported there, which duty continued from the years 1710 to 1718, and though no considerable objections were made at that time to the said acts, yet it appeared that at the price the negroes there have and by the smallness of the number that were imported in those years in proportion to what have been imported since those acts expired, and the numbers that are necessarily wanted annually in the colony, this duty must have been of great hindrance to the negro trade, as well as a burden on the Poor Planters. And although the duty laid by this act was much less than the former, the same must be attended with ill consequences at this time, and dis- courage the planting and cultivating naval stores, especially in the two new counties where great numbers of negroes will be wanting, and where Your Majesty has been pleased to remit the payment of any quit rent for seven years, to encourage the settling and planting the same.
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And it further appears that this act lays the duty on the importer, whereby the trade of Great Britain will be affected, and there is no clause inserted therein, pursuant to Your Majesty's instructions, to suspend its taking effect till Your Majesty's pleasure shall be known, for which reasons, and that there does not appear any immediate occasion for the said supplies and that no damage can arise from repealing the

said act, since the Assembly may have time to pass another law to raise the necessary supplies for which the act was designed, nor liable to the said objections. Their Lordships do agree humbly to offer their opinion to Your Majesty that the said act ought to be repealed and made null and void. And in regard to the Governor of the said Colony hath acted contrary to Your Majesty's instructions by not inserting a clause to prevent its taking effect till Your Majesty's pleasure should be known thereupon. Their Lordships are further of the opinion that Your Majesty's pleasure should be signified to him that he do not on any pretence whatsoever presume to give his consent to any act of this kind for the future without inserting such a clause as is before mentioned."

It is fully apparent from this decision of the Privy Council, that the good of the Colony was, if considered at all, of very secondary importance. It was the purpose and desire of the English Government to crush out the manufactures that might grow up as being in hurtful competition with the mother country, to promote at all hazards, the cultivation of "naval stores," that is, resin, pitch, etc., which could of course be more cheaply obtained in the Colonies than elsewhere; and further, as has been before stated, to encourage the slave trade of the English companies. Two fundamental laws of the Free Trade doctrine which, while for a time at least they may have worked to the advantage of the mother country, in no way innured to the benefit of the Colonies individually or collectively.

The first chapter¹ of the Act of 1727 was an Act for laying a duty on imported slaves; but, mindful of the rebuke received the preceding year from White hall, it was muzzled by a suspending clause. It failed of confirmation by the King. In 1732 an Act² was again passed laying a duty on slaves, a duty laid on liquors having been entirely insufficient to the public needs. It enacted that all slaves imported for sale, either by land or sea, or from whatsoever port, were to be taxed five per cent. on the price at which they were sold in the Colony, the duty being paid by the buyer within forty days after the pur-

¹ Henning, Statutes, Vol. IV., p. 182.

² Ibid, p. 317.

chase; the tax was varied in amount according as the sale was made in sterling or in "a commodity." If in sterling there was to be paid to the collector, over and above the regular duty of five per cent., "for the difference in money, after the rate of twenty pounds per cent. upon the amount of the purchase in sterling money." If the slave was paid for in "a commodity," the owner was required to value the slave in money and pay five per cent. on the valuation. Where the buyer was a non-resident the vendor was held accountable for the duty. Slaves born in the Colony or imported before the passage of this act were not subject to the tax, and if a bona fide purchaser, for his own use, of a slave on whom the duty had been paid, wished permanently to withdraw that slave from the Colony within a year after the purchase, he might receive back the duty paid, but because of the custom of smuggling slaves from North Carolina and of the ease with which it could be done, he was required to take oath that he did not intend to carry him into that Colony. If the purchaser of the slave had imported money into the Colony, under the law to encourage such importations, he was, on producing a certificate of the fact, to receive a rebate of fifteen per cent. of the duty on slaves. The vendor of imported slaves was required to keep a roll of the sales and deliver it to the collector within three months. There is a report in "Jefferson's Virginia Reports"¹ of a case under this Act against one Moore for not having transmitted to the collector of the duties a list of the slaves sold. Two years afterwards, in 1743, this Act was continued for four years.² The law of 1732, laying a duty on slaves to be paid by the buyer, gave rise to so many and so great frauds on the customs that it was considered necessary to amend it. This was done by chapter one of the Act of 1736.³ By this Act the buyer of any slaves imported by land or sea was required to pay, or secure to be paid, the duty within forty days after the purchase. In case the slave should die within forty days after the payment of the duty, the amount might be recovered in full by the owner. Importers were required to keep a full list of the number of their slaves, to

¹ Rex. v. Moore, p. 8; anno 1733.

² Henning, Statutes, Vol. IV., Chap. iii, p. 394.

³ Ibid, p. 469.

whom sold and for what price, and to deliver the same to the collector within two months after the arrival of said slaves in the Colony. If any slaves remained unsold at that time a similar list was to be made out twenty days after the last slave was sold. It had been the custom of importers under the former acts to hire out certain of their slaves, thus saving the purchase duty on the plea of their being for their own use. By this Act that practice was forbidden. By chapter six of the Act of 1738¹ this Act was further amended. This amended Act required the vendor himself to receive the duty as collector, but it further provided that if the vendor should happen not to be a resident of the district the tax was to be paid to the Naval Officer. During the war with Spain in 1740² it was found necessary further to increase the duties five per cent. of the purchase money, over and above all other duties, in order to raise funds for carrying on the war. Finally, the last law on this subject before the Revision, was in 1745. It extended the Act laying a duty on imported slaves to be paid by the buyer, until the year 1751.³

(B) 1748-1775. The first law to be passed, on revisal in this period, was an Act repealing the "Act to Prevent Fraud on the Customs," which had been enacted in 1705 during the reign of Queen Anne.⁴ Soon afterwards the Act first passed in 1732, during the reign of George II, was revived.⁵ This Act imposed a tax of five pounds per cent. to be levied on the purchase price of each slave imported for sale, either by land or water and from any place whatsoever. In order to make the collection of the tax from the buyer as easy of accomplishment as possible, the importer was required to make up and deliver to the Colonial Treasurer a statement of sale, containing the name and address of the purchaser, the price paid for the slave, and whether paid in currency or pounds sterling, in the latter case the duty being levied at the rate of twenty-five per cent. When the purchaser was an inhabitant of the district the Treasurer was to give his name and address with a statement of the amount due, to the Sheriff, who was required to collect

¹ Henning, Statutes, Vol. V., p. 28.

² Ibid, Chap. ii, p. 92.

³ Ibid, p. 318.

⁴ Ibid, Vol. VI., Chap. xxxvi, 1728, p. 84.

⁵ Ibid, Chap. i, 1752, p. 295.

it and pay it over to the Treasurer. The purchaser might, if more convenient to himself, pay the duty to the importer, who was held accountable to the Treasurer, as in the case of a non-resident purchaser. The importer was also required to make a return of all the privileged slaves on his ship.¹ In case the purchaser should not be an inhabitant of the district, it was provided that he should pay the duty to the vendor, who was required to make the return to the Treasurer under penalty of one thousand pounds. The duty was not to be paid on any slave who died within forty days after the sale, and if exported within twelve months thereafter the tax was to be refunded. This import was laid to pay off the public debt. The Act was extended to the year 1760 by the law of 1753,² and it was still further extended in 1759³ and 1766,⁴ and by the law of 1769, chapter seven,⁵ this duty was laid on *all* slaves imported. The following chapter⁶ of the same law laid a further duty of ten per cent. on all imported slaves over and above all former duties.

In the November session of 1759 it was provided⁷ that all persons bringing slaves into the colony, from the neighboring Colonies of Maryland or North Carolina, or from the West Indies, should be obliged to pay twenty per cent. duty on the bona fide purchase price of the slaves in the Colony in which they were bought. This act was called forth by frauds which were continually being perpetrated on the customs by slave-dealers and others, who, in order to avoid the heavy duties, were accustomed to import their slaves first into one of those Colonies, or to buy there those who were already imported and then bring them into Virginia. This Act did not apply to travellers who did not sell or barter their slaves. This Act was extended by chapter four of the law of 1766.⁸ Both the Acts laying duties on slaves to be paid by the buyer, and on slaves imported from Maryland, North Carolina or the West

¹ *i. e.*, Slaves imported for the personal use of the importer, and which were free of duty.

² Henning, Statutes, Vol. VI., Chap. iv, p. 353.

³ *Ibid.*, Vol. VII., Chap. xi, p. 281.

⁴ *Ibid.*, Vol. VIII., Chap. iii, p. 190.

⁵ *Ibid.*, p. 336.

⁶ *Ibid.*, p. 337.

⁷ *Ibid.*, Vol. XII., Chap. ii, p. 338.

⁸ *Ibid.*, Vol. VIII., p. 149.

Indies, were continued and amended by the Act of 1772, chapter fifteen.¹ The same Act revived so much of the Act of 1754, chapter one, as imposed five per cent. additional duty on slaves for the encouragement of settlers on the waters of the Mississippi. The duty of twenty-five per cent. *ad valorem* on slaves imported from Maryland, North Carolina and the West Indies was changed to a duty of five pounds per head. It was found that great frauds had been committed on the customs by importers of slaves, either by not entering them with the proper officers, by which the colony was entirely deprived of the lawful duty, or by making sham sales, where, for example, the slave was exposed at public auction and bought in for the owner, who was thus enabled to assess the duty on a great undervaluation, and then dispose of the slave afterwards at a *bona fide* sale for his real value, thus depriving the Colony of a large part of the revenue from this source; therefore it was further enacted that the owner or importer of any slaves from any country whatsoever should, within the time prescribed by the Act of 25 Geo. II "reviving the duty on slaves to be paid by the buyer," deliver the list of such slaves to the Clerk of the County, or to the Naval Officer, under penalty of £25 for each slave. This list to be transmitted to the Treasurer of the Colony under penalty of £10.

The Colony had established settlements upon the Mississippi, and the Assembly in 1754 passed an Act² for the encouragement and protection of settlements. A fund of ten thousand pounds was raised for their support by a loan which was guaranteed by this bill, and a duty of five per cent over and above all other duties was laid on imported slaves to secure it. This Act was to continue in effect until the fourteenth of February 1765, but in 1763³ it was further extended for five years. It was again re-enacted in so far as it related to the duty to be collected for the contingent expenses of Government.⁴ Chapter two of the Act of 1755⁵ was in explanation of an act to raise twenty thousand pounds to defend

¹ Henning, Statutes, Vol. VIII., p. 530.

² *Ibid.*, Vol. VI., Chap. i, p. 417.

³ *Ibid.*, Vol. VII., Chap. i, p. 639.

⁴ 27 George II; 10 George III.

⁵ Henning, Statutes, Vol. VI., p. 461, May Session.

the Colony against the French. The sum was to be raised by a tax of ten per cent. laid, over and above all other taxes, on the sale of imported negroes. But being found too burdensome to the purchasers it was repealed by chapter one of the Act of 1760.¹

The masters of vessels importing slaves into the Colony had been accustomed to throw over board all persons who died on their vessels, even when in port, to the great annoyance of the surrounding inhabitants. It was therefore required² by law that whenever any person, either negro or white, died on board a ship within the jurisdiction of the Colony, the master should have the body carried on shore and decently buried above high water mark in a grave at least four feet deep. It was found necessary to amend this Act in 1761,³ by attaching a penalty of fifty pounds for every violation of it. Small pox and gaol fever were frequently spread among the colonists by imported convicts, servants and slaves, and had proved almost as fatal as the plague, which had visited the Colony in the first years of the reign of George I, and against which quarantine had to be established.⁴ To prevent the transmission of these diseases vessels having cases of them on board were required to be quarantined. Masters of vessels were forbidden to land convicts, servants and slaves, until after they had entered at the naval office, and the master, mate or boatswain of each and every ship had taken oath that there was no such disease on board. Fifty pounds penalty was imposed for any violation of this act.

§ 2. LAWS DETERMINING THE CIVIL CONDITION OF IMPORTED NEGROES.

(A) 1620-1748. At first there were no laws to determine who might or who might not be enslaved. Probably all negroes who were brought into the Colony to be sold, were taken, and no questions asked. It is also probable that some of these were, by reason of their condition, or place of residence, or both, separated by the prevailing sentiment from

¹ Henning, Statutes, Vol. VII., p. 357, May Session.

² Ibid, Vol. VI., Chap. xxxvi, 1748, p. 94.

³ Ibid, Vol. VIII., Chap. vi, p. 392.

⁴ 8 George I.

the generality of negroes, who were, with many of other races and colors, considered the legitimate prey of the slavetrader. Doubtless many christian and free negroes were carried away, and sold by slave dealers, as we know many white people were in other countries. At any rate this was the case later, as we shall see from the laws passed to prohibit such villainies, which were to the effect that any one selling a free person into slavery should, on such person recovering his liberty, forfeit double the price to the purchaser.¹ The laws also defined the conditions under which persons might legitimately be enslaved. There had sprung up about this time among christian people a decided animus against enslaving christians, as derogating from the dignity of the christian religion. And judging from some of the early English decisions on the subject, and from eminent writers on legal matters, the fact of the individual being a christian or a heathen would alone seem to have determined the right to enslave. The bond of a common religion was powerful to curb the rapacity of otherwise hostile notions, when that of blood was as a rope of sand.

In 1670 the status of all imported servants was fixed by chapter twelve of the Act of that year.² It provided that all servants not christians, imported in ships, were to be sold as slaves, all others, that is those who were christians before importation, or who were imported by land, were to be indentured for a term of years. All negroes and mulattoes who had been christians before their importation became free indentured servants even if they had been slaves before, and the same was the case if they had been heathen slaves and had been imported by land. Therefore the Act of 1682³ was passed declaring those also to be slaves. The forty-ninth chapter of the Act of 1705⁴ was the next on this subject; it was an amendment of the preceding Act. It provided that all persons imported by sea *or land*, not christians in their own country, except Moors and Turks in amity with England, or who had not been free in any christian country before their importation, should be slaves. It further provided, to guard

¹ Henning, Statutes, Vol. III., Chap. xlix, 1705, p. 447.

² Ibid, Vol. II., p. 283.

³ Ibid, Chap. iiii, p. 283.

⁴ Ibid, Vol. III., p. 447.

against the fraud and mischief that would arise from selling free persons as slaves, that any one guilty of such an act should be liable to the purchaser for double the price, on the recovery of his liberty by the person sold—a law exceedingly beneficial to the purchaser in such a case; the only objection to it would seem to be that it did not go far enough. It seems rather to leave the inference that the *other* victim of the trader's landable attempt to increase his income would have to content himself, for a recompense, with his liberty—if he got it. In the case of Robin et al, against Hardaway et al,¹ a concise summary of the laws applying to the indians is given by Colonel Bland, counsel for the defense. As some of the laws apply also to the negroes, and both negro and indian were regarded in the same light, and legislated against in the same manner, it will also give a good idea of the laws respecting the status of the negro in Virginia. Colonel Bland said in the course of his argument that “indeed a set of negroes after the year 1679^x who having been brought in by land, were, under the law of that year, but temporary servants, and these are the subject of one of the main branches of the Act of 1682; so that when the Act of 1684^y repealed that of 1679^x it took (away) one of the many foundations of 1682. There still remained subject to its operation; *first*, the indians taken in war before the year 1670, and held by their captors in slavery under the law of nature; *second*, negroes brought in and sold as slaves before that time, then indians and negroes brought in by land after 1670 and under that Act held in temporary servitude, on all these the Act of 1682 continued to operate, so that in fact none were withdrawn from its power but the few described in the Act of 1679,^x to wit, those who might hereafter be taken in war by our own soldiers whenever we should have soldiers.” The Act of 1682 the court held to be repealed by the act of 1705 chapter forty-nine.⁵

¹ Jefferson's Reports, 109 (argued, 1772).

² Jefferson's Reports, 109.

^x An act for defense of the Colony against the Indians. It enacted that Indian prisoners of war should be free purchase to the soldiers taking them. —(Counsel's Argument) Jeff. Reports, 111.

^y “An Act for the Better Defense of the Colonies.” It expressly repeals the Acts of 1676, 1680, 1682, C. 7; and provides other troops to protect the frontier and *reenacts nothing derogatory of the rights of freedom*. —(Counsel's Argument) Jeff. Reports, 112.

Another question requiring legislative enactment was as to the condition to which should be assigned children, one of whose parents was bound either as a servant or a slave. A law was passed in 1662,¹ declaring that the child should follow the condition of the mother; this was the old civil law rule "*partus sequitur ventrem*," which was entirely contrary to that of the common law by which the child, if legitimate, followed the condition of the father. This law was re-enacted in 1696² and again in 1705, chapter forty-nine.³ In 1705, the legislature defined mulattoes as the half-breed children of an Indian, and also declared the children and grandchildren of a negro and a white to be mulattoes.⁴ A white woman having a bastard by a negro was, by the Act of 1691, chapter sixteen,⁵ to be condemned to pay a fine of fifteen pounds or be sold for five years, the child to be apprenticed to the church wardens until its thirtieth year. By the Act of 1705,⁶ chapter forty-nine, it was enacted that if any woman servant had a bastard by a negro, she was, on the expiration of her service, to pay to the parish ten pounds or be sold for five years. If the guilty party was a free white woman the penalty was the same, while in either case, the child was to be indentured to the church wardens until its thirtieth year. By chapter four of the Act of 1723,⁷ the children of Indian and mulatto women bound to service until their thirtieth year, were obliged to serve the masters of the mothers the same length of time as had the mothers. These latter laws were in many cases especially severe, visiting not only the sins but the misfortunes of the parents upon the children, to the third and fourth generation, for it might happen, and often did happen, that by reason of this law men and women were held in servitude as a punishment for the act of their great grand-parents, or because their ancestors to a more or less remote generation had each and every one been servants under this law at the time of the birth of their children.

(B) 1748-1775. The old civil law rule that children should

¹ Henning, Statutes, Vol. II., Chap. xii, p. 170.

² Ibid. Vol. III., Chap. i, p. 140.

³ Ibid. p. 447, §36.

⁴ Ibid. Chap. iv, p. 250.

⁵ Ibid. p. 86.

⁶ Ibid. p. 447.

⁷ Ibid. Vol. IV., p. 126.

follow the condition of the mother was continued by the law of 1748,¹ which also declared that all persons imported into the Colony by land or sea, who were not Christians in their own country or free in some Christian country before their importation, except Turks and Moors, should be slaves. These provisions were enacted again in the law of 1753, chapter four,² which also provided that the child of an Indian or mulatto woman bound to serve until her thirtieth year, should be required to serve the same length of time as its mother. Any woman servant having a bastard by a negro or mulatto was required to serve her master a year longer, and at the expiration of her service to pay the parish fifteen pounds in currency, or be sold for five years. If a free white woman should have such a bastard, within one month after her delivery, she also was required to pay a fine of fifteen pounds currency to the parish or be sold for five years. In both cases the child was to be bound to the church wardens until its thirty-first year.

Masters were required to provide their indentured servants with proper food, clothing and lodging, and were forbidden to correct them immoderately, or to whip a Christian white servant naked without an order from a Justice of the Peace, under penalty of fifty shillings damages and costs, to be paid to the said servant.³

§ 3. LAWS RELATING TO SLAVES AS PROPERTY.

(A) 1620-1748. Many of the laws already mentioned applied to slaves as well as to others. Most of the laws relating to the importation of negroes were applicable to slaves only. As all negroes were not slaves, so all slaves were not negroes, some were Indians, and whether they were or not, it is fully apparent that all others who were not Christians, even though white, might legally be reduced to slavery, with the two statutory exceptions of Turks and Moors, because their governments were in amity with England. And it is conceivable indeed, that for a time, at least, even Christians might be reduced to practical slavery. The majority of the indentured servants were bound

¹ Henning, Statutes, Vol. V., Chap. xiv, p. 547.

² Ibid. Vol. VI., p. 356.

³ Ibid.

for a term of years only, more or less long according to circumstances, but some were bound for life and these were to all intents and purposes as much slaves as the negroes, the only difference being that at first their children were free. Then came the law of 1662, declaring that all children should follow the condition of the mother. This Act would reduce the children of female indentured servants to the condition of bond servants, and presumably, there being no law to the contrary, for the same period of service, that is, in some cases, for life, thus completing the analogy between them and slaves so-called in law.

When first imported, negroes had been held as personal property as a matter of course, no laws having been enacted on the subject. In 1705¹ this was all changed and they were with certain exceptions declared to be real estate. The exceptions were as follows: 1. When they were brought into the country by a merchant or factor and remained unsold, they were liable as personalty for the payment of debts; 2, when their owner died without heirs; 3, they were excepted from the rule requiring the recording of the transfer of real property; 4, their ownership did not confer the voting franchise as did the possession of real estate; and, 5, they could be sued for in trover, detinue, or conversion. If necessary a writ of dower or of "se partitione facienda" might issue, and the children of one dying intestate were to receive the value of the slaves after the deduction of dower. A widow sending dower slaves out of the country forfeited them to the reversioner. There had been a good deal of trouble with respect to the disposal of slaves belonging to an intestate estate. An attempt was made to remedy this in 1671,² but not very successfully. The administrators had previously been empowered to turn the slaves themselves over to the heirs or to sell them under a valuation and pay over the money; by this Act the discretion was vested in the Court. In 1710³ a recommendation that the law declaring negroes real estate be repealed, was rejected by the committee of the House of Burgesses, and in the following year,⁴ it was

¹ Henning, Statutes, Vol. III., Chap. xxiii, p. 333.

² Ibid. Vol. II., Chap. iv, p. 288.

³ Calendar of State Papers, p. 145,

⁴ Henning, Statutes, Vol. IV., Chap. iii, p. 12.

enacted that the slaves of an intestate decedent should remain on the land until the twenty-fifth of December next succeeding the death of the owner, to work the crops. They were then to be delivered to the heirs, and the executors or administrators were not responsible for any slave who died during that period. By the law declaring them real estate slaves had become subject to the law of entail.¹

The law making slaves real estate had thus far been found in the main very beneficial, but mischief had arisen from the varying constructions put upon it, therefore in order to rectify this, the Act of 1727, chapter eleven, was passed.² This Act proceeded to tangle matters yet more than before. Slaves were to be sold, given and bequeathed, in like manner as chattels, and there could only be such a remainder over as could be created in any chattel at common law, except as otherwise especially provided. Slaves belonging to women vested, on marriage, in the husband absolutely. They might be bequeathed by the will and testament of an infant over eighteen; they were to be forfeited only in cases such as those in which lands and tenements might be forfeited; they were not to be sold by executors or administrators to pay debts until the personal estate was exhausted. The slaves of an intestate mother were to be disposed of in the same way as those of an intestate father. Former judgments of the General Court or the County Court as to the title to slaves were not to be affected by this Act, nor were remainders, limited before its passage. As it was considered of advantage to have slaves fixed to the land, they might be so fixed by last will and testament or by deed, and would then be subject to such like limitations, reversions and remainders, as real estate. But to prevent fraud on creditors such slaves might be seized for the satisfaction of the debts of the tenant in tail for the time being, the seizure to be good against him and all claiming under him. The slaves of the wife annexed to the land might not be taken so as to bar her right after her husband's death. All actions for dower or partition of slaves were to be brought in Chancery. Instead of suing the heir-at-law by the common law for the proportionate

¹ Henning, Statutes, Vol. IV., Chap. iv and v, pp. 28 and 29.

² Ibid. p. 222.

value of slaves, minor children were to exhibit a bill in equity and the Court was to proceed upon the bill and the answer, although the defendant were an infant. A widow was allowed to renounce the provisions of her husband's will and take dower instead. The next year an Act¹ was passed to save executors and administrators from loss by the sale of negroes taken in execution, because of false appraisement by appraisers appointed by law. "Slaves and neat cattle" were to be sold for debt only when the personal estate failed. If the owner of slaves died on or after the first of March of any year his slaves were to be continued on the estate until the twenty-fifth day of December next following. In 1730 began the reports of cases in the Colonial Courts, the first two being for the possession of negroes on the ground of their being chattels.² In the next case, argued in 1731, it was urged by counsel that "slaves notwithstanding the law making them real estate, remain in the hands of the executors by that Act as chattels and as such do vest in them, for payment of debts. So that in this case they are considered no otherwise than as horses or cattle, and there is no doubt that the increase of any living creatures after the death of the testator are looked upon as part of his estate and are liable to be taken for his debts," and the Court so decided.³ In 1738 slaves were declared not liable for debts less than ten pounds, provided there were other sufficient goods, nor were they to be taken for fees or levies.⁴ Not only did private persons own slaves but the Colony and the Church also. In 1692 a bill provided for the purchase of slaves by the Colony to work upon the house of the Governor,⁵ and in 1726 an Act was passed providing for the purchase of the glebe of Elizabeth River Parish, and for the sale of other glebes, the proceeds to be used to buy slaves to be fixed forever to the first named glebe, for the benefit of the parson.⁶

(B) 1748-1775. The first law we find in the Revised Statutes is an Act to prevent frauds on mortgagees by requiring slaves to be registered. A similar Act was passed in 1757.⁷ Frauds

¹ Henning, Statutes, Vol. IV., Chap. viii, p. 281.

² Jefferson's Reports, Va., pp. 1 and 2.

³ *Tucker v. Sweeney*, Jefferson's Reports, p. 5.

⁴ Henning, Statutes, Vol. V., Chap. ix, p. 36.

⁵ *Ibid.* Vol. III., Chap. xviii, p. 285.

⁶ *Ibid.* Vol. IV., Chap. xix, p. 440.

⁷ *Ibid.* Vol. VII., Chap. vi, p. 118.

had frequently been perpetrated on creditors and purchasers through the practice of parents and children making secret gifts of slaves to each other, and to third parties. That Act declared all such gifts null and void unless made by will or other writing duly recorded, and all gifts made before the passage of this Act were required to be recorded within eight months. If the donor refused to make the deed, the donee, by proving the gift before a Court, which proceedings were to be duly recorded, should hold the slave as if conveyed by deed. This Act was further extended in the following year.

The law of 1748 chapter two,¹ was one of great importance and was one of the ten which called forth the royal veto. It was a repeal of the law making slaves real estate and a declaration that they were thereafter to be considered as personal property, the former Act having given rise to great trouble and confusion; this was not to go into effect until 1751. It, as has already been said, did not find favour at Whitehall, and Governor Dinwiddie was ordered to repeal it, which he did by proclamation on the thirty-first of October 1751,² at the same time with several other Acts, among which was "An Act Concerning Servants and Slaves."³ Against this repeal the Colonists made a strong protest, and sent an address⁴ to the King setting forth as reasons for the enactment of the said laws, that slaves were in their nature personal and not real estate, and had remained so until the fourth year of Queen Anne, when the legislature declared them real property, with so many exceptions, however, that they still remained largely personal. Especially did the two laws respecting the entail of slaves beget the most dire confusion and give rise to innumerable law suits. The first Act had declared that slaves annexed to an estate should pass as part of the freehold, while the second one declared that such slaves might be sold in execution for the debts of the tenant in tail, thus barring the entail. Further, as no genealogies were kept, it was so difficult to distinguish between slaves held in fee simple and those held in fee tail, as to tend to great embarrassment in

¹ Henning, Statutes, Vol. V., p. 432.

² Ibid. p. 567.

³ Ibid. Chap. xiv, p. 547.

⁴ Ibid. Note, p. 432, *et seq.*

business, the owners being unable either to sell or to mortgage their slaves on account of the fear entertained on all sides that they might be entailed. Slaves¹ could not be taken on *fi. fa.* for less than ten pounds sterling or two thousand pounds of tobacco, provided there was other sufficient personal property within the bailiwick of the officer, but a minister might distrain the slaves, goods and chattels of any parishioner who failed to pay the parish rates.² Any person holding two or more tithable male labouring slaves was exempted from personal service on the highways, but he had to send his slaves under penalty of five shillings for every slave absent.³

In Jefferson's Reports we find a decision rendered in 1768 to the effect that slaves as well as lands might be conveyed to uses and were within the statute of uses,⁴ also that a *femme sole*, by her marriage, gave no right to the husband over any slaves not in possession; but if, being entitled to any slaves not in her possession, she died before reducing them to possession, the right so to reduce them survived in the husband.⁵ Slaves could not be entailed unless annexed to land,⁶ and there was no right of hotchpot in dividing the value of slaves.⁷ In *Smith vs. Griffins*⁸ it was held that slaves could not pass by a devise of personal estate. The case of *Hamilton vs. Carr*⁹ is rather an interesting one. William Carr, by a will dated August second, 1760, disposed of his estate, both real and personal, including slaves. After making the will he inherited other slaves from his uncle who died intestate. In settling up Carr's estate suit was brought to determine whether these latter slaves passed under the terms of the will, it not having been reformed or republished by the testator with respect to them. Pendleton for the defense argued that slaves, by statute, were made real estate, which at common law was indivisible, but that they were also brought under the statute of

¹ Henning, Statutes, Vol. V., Chap. xii, p. 535.

² Ibid. Vol. VI., Chap. xxxiv, 1748, p. 88.

³ Ibid. Chap. xxviii, p. 64.

⁴ *Curtis et al., v. Fitzhugh*, 72.

⁵ *Brent v. Porter*, 72.

⁶ *Blackwell v. Wilkenson*, 73.

⁷ *Allen et al., v. Allen et al.*, 86.

⁸ p. 132.

⁹ p. 182.

wills, thus making them divisible. Wythe for the plaintiff held, on the other hand, that they were real estate, and had "not their testable quality from the statute of wills, but from their own nature," slaves being real property when the owner died intestate, but personal in every other instance. The case was decided on the ground that the residuary clause was so peculiarly drawn as to exclude the slaves, leaving the points made by the counsel undetermined.

By chapter twenty-three of the Act of 1705 slaves were declared to be real estate and became entailable. Almost immediately private statutes began to appear, generally for the purpose of breaking the entail of slaves and land, and "to set other lands and slaves to the same uses"; sometimes to sell parts of entailed lands to buy slaves to fix to the remainder; sometimes for selling slaves to buy land upon which to fix other slaves. The first of these bills was chapter four of the Act of 1711; thereafter up to the period of the Revolution they appear in great numbers on the Statute-books. From an entry in the "Calendar of State Papers,"¹ it would seem as if the possession of real estate or slaves was a prerequisite to eligibility to office. This entry is a statement of charges brought against Colonel Spotswood by Colonel John Thornton charging the former with malfeasance in office. One of the charges, the second, being that "the said Spotswood had likewise given a captain's commission to Aaron Bledsoe a person that had neither land nor slaves in the county."

§ 4. RUNAWAYS.

(A.) 1620—1748. There had been a great deal of trouble experienced from the escaping of indentured servants, who had, for punishment, been made liable when recaptured, to a longer service. The slaves seem to have begun to follow the example of the indentured servants, and in 1660 an Act² was passed declaring that English servants running away with negro slaves should serve not only for their own lost time, but also for that of the negroes. In 1670³ a standing reward was offered for the apprehension and return of runaway servants

¹ Vol. I., p. 252.

² Henning, Statutes, Vol. II., Chap. xxii, p. 26.

³ Ibid, Chap. i, p. 277.

and slaves, the former statute not having been very effective. In 1691¹ it was enacted that slaves running away and lying out were to be apprehended by the Sheriff or any other person who might come upon them, and that if they resisted arrest or attempted to escape they might be killed, four thousand pounds of tobacco being paid to the master, by the people, as compensation for the loss of the slave. In 1692² it was ordered that slaves whose masters could not be discovered should be turned over to the Sheriff of James City. In 1701, "an Act³ of attainder" was passed against a negro who had been lying-out, stealing crops and doing other damage for several years; a reward of a thousand pounds of tobacco was offered for his apprehension or death, and it was declared a felony for anyone to harbour him. If he was killed his master was to receive four thousand pounds of tobacco as a re-embursement. It having been found that slaves were escaping by way of the sea, it was forbidden, under penalty of one hundred pounds sterling for each slave, to carry slaves clandestinely out of the Colony. The rigor of this will be appreciated when it is stated that the value of the best slave was not above twenty-five pounds sterling. By the forty-ninth chapter of the Act of 1705⁴, a reward of one hundred pounds of tobacco was offered for the apprehension of a runaway slave taken within five miles of his home, and two hundred pounds if ten miles away. A runaway slave refusing or unable to give the name of his master was to be imprisoned until his master's appearance, and was to receive a number of lashes, not exceeding thirty-nine, on being apprehended and each day while awaiting the identification of his master. He was to be turned over to the Sheriff, who was made responsible for him if he permitted him to be hired out to work or allowed him to escape. Outlying slaves refusing to come in and give themselves up, after proper warning were outlawed and might be killed by anyone. Any such slave when captured might be punished "by dismemberment or otherwise not touching life or limb" as the Court saw

¹ Henning, Statutes, Vol. III., Chap. xvi, p. 86.

² Calendar of State Papers, p. 36.

³ Henning, Statutes, Vol. III., Chap. ii, p. 210.

⁴ Ibid. p. 447.

fit. Any slaves killed while escaping, or put to death as a punishment, were to be paid for by the people. There is on the Statute-books an Act passed in 1722¹ entitled "An Act for Amending the Act Concerning Servants and Slaves; and for the Better Government of Convicts Imported; and for the Further Preventing the Clandestine Exportation of Persons Out of the Colony." The title only of this Act is extant. It was, however, repealed in 1723. By chapter four of the Act of 1723² it was provided that slaves being habitual runaways or habitually lying-out, should be punishable by dismemberment or in any other manner not touching life, at the hands of their masters, and if while undergoing such punishment at their master's hands, or by an accidental blow given by him, they should be killed, such killing was not to be considered as murder, and the owner was not to be punished for it unless the killing was willful. Former laws having proved insufficient to check the running away of slaves further provision was made in 1726, chapter five.³ It was then enacted that runaway slaves who could not or would not give the names of their masters should be committed to the County Gaol, and a full description of them be published at the Court House by the Sheriff and at the churches after service. If the slave was not claimed within two months thereafter he was to be lodged in the Public Gaol of the Colony by the Constables, who were to be responsible for any escape. The transportation fees were to be paid by the Colony. Slaves in the Public Gaol might be hired out by the keeper in payment of their expenses. If the owner appeared the hirer was compelled to return the slave to the keeper, paying the proportionate hire, and the keeper, on receipt of all expenses incurred over and above the amount of the hire, delivered the slave to his master. By putting a collar marked "P. G." around the neck of the runaway the keeper was enabled to relieve himself of all responsibility. If the owner was a citizen of Maryland or North Carolina, he was chargeable with the fees demanded in the province in which he resided. Slaves known to have run away from Maryland or North Carolina were at once lodged in the Public Gaol, and

¹ Henning, Statutes, Vol. IV., Chap. v, p. 106.

² Ibid. p. 126.

³ Ibid. p. 168.

the Sheriff sent a full description to a properly designated place in the province from which the slave had escaped. If such a slave was hired out no commitment fee was to be charged. If no owner could be found the Gaol fees were to be paid by the public. To prevent the clandestine transportation of slaves out of the Colony masters of vessels were obliged to take oath that they would not carry out of the Colony people who were without passes.

In 1680, by chapter ten,¹ it was made unlawful for negroes to leave their master's plantation without a certificate. A breach of this law was punishable with twenty lashes. This, not proving efficient, was amended in 1682, by chapter three² of the Act of that year, which declared that any person allowing another's slaves to remain on his plantation for more than four consecutive hours without the consent of the master or overseer of such slave, should, upon conviction by two witnesses, be fined at least two hundred pounds of tobacco for each offense. This latter law was re-enacted in the Act of 1705, chapter forty-nine.³ By chapter four of the Act of 1723⁴ it was enacted that any masters or overseers who allowed slaves not their own, above the number of five, to remain on their plantation at any one time, should forfeit five shillings or fifty pounds of tobacco for each slave. Every slave coming on the plantation of one other than his owner, without the permission of such person or of his owner, should receive ten lashes. Any damage done by slaves living at quarters where there was no overseer was to be paid for by the owner.⁵ This also was re-enacted by the comprehensive Statute of 1705, chapter forty-nine.⁶ Among the laws of 1723 there is the title of "An Act for the Transportation of Dick and other Negro Slaves."⁷ The Act itself is not extant and no explanation of it can be found.

(B.) 1748—1775. The laws enacted during this period respecting outlying and runaway slaves were very similar to

¹ Henning, Statutes, Vol. II., p. 481.

² Ibid. p. 492.

³ Ibid. Vol. III., p. 447.

⁴ Ibid. Vol. IV., p. 126.

⁵ Ibid. Vol. III., Chap. iii, 1692, p. 102.

⁶ Ibid. p. 447.

⁷ Ibid. Vol. IV., Chap. vii, p. 185.

those of the preceding period. For the apprehension of a runaway slave above ten miles from home two hundred pounds of tobacco were offered, and one hundred pounds of tobacco if between ten and five miles away. The reward was to be paid by the town wherein the "taker-up" resided. The runaway was then taken before a Justice of the Peace, who sentenced him to receive a number of lashes not exceeding thirty-nine, and then returned him home. If the runaway could not or would not declare the name of his owner or master he was lodged in gaol, and a full description of him was posted at the Court House and read at the church door every Sunday for two months. If within that time the owner did not appear, the runaway was carried to the Public Gaol, and a full description of him was published in the *Virginia Gazette* for three months. With the consent of the Court he might be hired out until his master appeared, for the purpose of paying his transportation and gaol expenses. Any person claiming him while in the Public Gaol was required to prove his ownership in the County Court of the county in which he resided. If the owner failed to appear within a reasonable time the slave was sold at public auction. Runaways escaping across the (Chesapeake?) bay were turned over to the Sheriff, and not as in the former cases to the Constable, and runaways from the neighbouring Colonies of Maryland and North Carolina were disposed of in the same way.¹ Sometimes slaves were carried off on ocean-going vessels. To prevent this, owners of vessels carrying them off without the consent of their master, were to forfeit £100 for every slave so carried off.² They were also required to take oath that they would carry no one off unless furnished with a passport. Slaves who had become habitual runaways were punished by "dismemberment or otherwise not touching life," and if they died as a consequence of the punishment no penalty was incurred, except that the owner of a slave dying as a result of the negligence of a surgeon or killed by any other person might recover full damages.³ In 1753 the provisions respecting runaways who failed to disclose the names of their

¹ Henning, Statutes, Vol. V., Chap. xiv, 1748, p. 547.

² Ibid. Vol. VI., Chap. xxii, 1748, p. 44

³ Ibid. Chap. xxxviii, p. 104.

owners, and runaways from Maryland and North Carolina were re-enacted.¹ On receiving information as to slaves lying-out and stealing and perpetrating other mischief, two Justices of the Quorum of the County where such slaves were supposed to lurk were empowered to issue a proclamation requiring them to surrender and ordering the Sheriff to make search for them. The proclamation was to be published at the door of every church in the county for two Sundays. Any slaves remaining out after the second publication might be killed by anyone without impeachment of crime, and any slaves put to death in compliance with this Act were to be valued, and paid for by the public. If a slave was killed while undergoing correction, or by an accident of any kind, the person killing him was not to be held criminally responsible, and anyone indicted for the murder of a slave and found guilty of manslaughter only was not to be punished in any manner.²

The method of taking-up and returning runaway servants and slaves under the first laws, having been found exceedingly inconvenient to owners and officers and expensive to the Colony, the law of 1765, chapter twenty-five,³ provided that any slave taken-up who should give the name of his master should be carried before a Justice, and if on examination he proved to be a runaway the taker-up was required to deliver him, or cause him to be delivered, to his master from whom he should be entitled to collect fifty shillings and mileage. Servants and slaves not giving the names of their masters were to be dealt with as before. The Act of 1748, chapter thirty-eight, so far as it related to outlying slaves, was continued by the Act of 1772, chapter nine,⁴ which stated that slaves were to be outlawed only when the Justice who issued the proclamation was convinced of their mischievous acts, and if a proclamation was issued contrary to this law and a slave was killed in consequence the owner could not recover from the public. This last clause must have been exceedingly popular with the owners.

¹ Henning, Statutes, Vol. VI., Chap. vii, p. 356.

² Ibid. Chap. xxxviii, 1748, p. 104.

³ Ibid. Vol. VIII., p. 135,

⁴ Ibid. p. 522,

§ 5. LAWS AGAINST INSURRECTION.

(A.) 1620—1748. In 1702 the Council took measures to provide against that bugbear of slave owners, a servile insurrection.¹ This appears to be the first of the laws of this character and was called forth by the dangers threatened during the war with France and Spain, in which the Colonies were largely concerned. In 1709 there is, in the "Calendar of State Papers," the mention of an investigation of a conspiracy of negro and Indian slaves to make their escape, by force if necessary. None of the negroes captured being leaders, only one of them was punished, receiving forty lashes,² and one James Booth, a free negro, who knew of the conspiracy, but failed to disclose it, received twenty-nine lashes. Subsequently, in 1712, a negro named Scipio and an Indian named Salva were found guilty of treason for complicity in that conspiracy, and sentenced to death.³ In 1715⁴ it was made a condition of peace with the "Cattabaws," Cherokees and other Indian tribes with whom the Colony had been at war, that they should deliver up Pompey, an Indian slave, and Pope, a negro slave, who had been active in support of the Indians. The laws already passed being found inadequate for the purpose of preventing insurrections and secret plottings, it was enacted in 1723,⁵ chapter four, that any number of slaves above five, guilty of plotting to rebel or murder any person, should be considered felons and condemned to death "without benefit of clergy." Masters or overseers might permit slaves to congregate at the quarters or other lawful places, and for public worship; other meetings were forbidden. And any free person present at any such unlawful gatherings, or who harboured or entertained any slaves who attended such meetings, was to be fined fifteen shillings or one hundred and fifty pounds of tobacco. Warrants for the arrest of all persons present at such meetings were to be issued within ten days, and a fine of fifty shillings was to be levied on any Sheriff who failed to attempt to disperse any such meetings. The value of any slave killed in the execution

¹ Calendar of State Papers, Vol. I., p. 79.

² Ibid. pp. 129 and 130.

³ Ibid. p. 161.

⁴ Ibid. p. 182.

⁵ Henning, Statutes, Vol. IV., p. 126.

of this Act was to be paid to his master. Chapter five of the Act of 1727¹ empowered the County Lieutenant, or any other officer commanding the militia, to disperse unlawful gatherings of slaves and to arrest any slaves found together contrary to the law of 1723. This law was extended by the Act of 1732, chapter four,² for three years, and was again continued for three years more by the Act of 1734, chapter four.³ By chapter two of the Act of 1738⁴ provision was made for patrollers. The militia was required to patrol all negro quarters and places where there might be "unlawful assemblages of slaves, servants or other disorderly persons;" to apprehend all slaves and servants strolling from one plantation to another, without the permission of their masters, and carry them before a Justice, who was to sentence them to not less than twenty lashes. By chapter three⁵ of this same Act the law against insurrections was further extended for three years. Under the Statute of 1705, chapter twenty-four,⁶ slaves were exempted from military duty.

(B) 1748-1775. The new laws did not materially change the old. Masters and overseers were forbidden to allow any strange slave to remain on their plantations for more than four hours at a time without the consent of the owner or overseer of such slave, under penalty of one hundred and fifty pounds of tobacco for each violation of the Act. If more than five strange slaves were allowed to remain on the plantation at one time, five shillings or fifty pounds of tobacco was to be forfeited for each slave above that number. This did not prevent slaves of the same owner, though of different quarters, from meeting on the owner's plantation with the owner's leave; nor did it apply to the meeting of slaves at a mill on the business of their owners, provided it was not at night or on Sundays; nor to their meeting on any other lawful occasion with the consent of their owners given in writing, or to going to church on Sunday or any other day of public worship.⁷ The owner

¹ Henning, Statutes, Vol. IV., p. 197.

² Ibid. p. 323.

³ Ibid. p. 395.

⁴ Ibid. Vol. V., p. 16.

⁵ Ibid. p. 24.

⁶ Ibid. Vol. III., p. 333.

⁷ Ibid. Vol. VI., Chap. xxxviii, 1748, p. 104.

of a plantation might punish with ten lashes any strange slave coming on his plantation without permission. Slaves were forbidden to leave the place where they were appointed to live, without the consent of their owner or overseer. Any white man or free negro, mulatto or Indian, found in the company of slaves at any unlawful meeting, or who harboured or entertained a slave without his owner's consent, forfeited fifteen shillings or one hundred and fifty pounds of tobacco to the informer, or received twenty lashes, while every slave present received any number of lashes not exceeding thirty-nine, at the discretion of the Judge. A Justice of the Peace or Sheriff who failed to suppress any such meeting, forfeited fifty shillings or five hundred pounds of tobacco, and any Under-Sheriff or Constable so failing, forfeited two hundred pounds of tobacco, to the informer. The "Act for the better regulation of the militia" passed in 1754,¹ provided for a patrol, to be appointed every June by the chief of the militia, which was to consist of not more than four men, who were required, at least once in every month, to visit all negro quarters and other places suspected of entertaining unlawful assemblages of slaves or others. They were empowered to arrest all unlawfully assembled persons, and all slaves strolling from plantation to plantation without a pass, and carry them before a Justice of the Peace who should sentence them to not more than twenty lashes. This Act was continued by the Act of 1757, chapter three.² Negroes or other slaves, consulting, advising, or conspiring, to commit murder were to be adjudged guilty of a felony and were to be punished with death "without benefit of clergy."³

§ 6. PUNISHMENTS FOR VARIOUS OFFENSES.

(A) 1620-1748. It was in the Colony, as it was later in the State, a very heinous offense for a negro or a slave to assault a white man. Chapter ten of the Act of 1680⁴ provided that if a slave lifted his hand against a Christian, meaning presumably a white man, he was to receive thirty lashes, that

¹ Henning, Statutes, Vol. VI., Chap. II, p. 421.

² Ibid. Vol. VII., p. 93.

³ Ibid. Vol. VI., Chap. xxxviii, 1748, p. 104.

⁴ Ibid. Vol. II., p. 481.

this did not mean "*Christian*," is made evident from a section of the Act of 1705¹ which enacted that any negro or mulatto, whether *bound or free*, who should presume to raise his hand against a Christian white person should be punished with thirty lashes.

There appears to have been some doubt as to whether a master or overseer really had the right to kill one of his slaves. To set that matter at rest a law² was passed, declaring that if a slave resisted his master, or one authorized by his master, while undergoing punishment and was killed, the killing should not be a felony, and this was re-enacted by chapter forty-nine of the Act of 1705.³ The manslaughter of slaves was declared by the Act of 1723, chapter four⁴ not to be punishable, except that the owner might sue for damages.

Pig stealing and the killing of deer by slaves were severely dealt with. For the first offense of pig stealing the offender was to receive thirty-nine lashes, for the second he was to stand two hours in the pillory with his ears nailed thereto, and at the expiration of that time his ears were to be cut off next to the nails.⁵ This penalty was augmented⁶ by a later Act requiring the owner of the offending slave to pay two hundred pounds of tobacco for each hog killed. For killing deer without the knowledge of his master or his overseer a slave was to be punished with thirty lashes, this Act⁷ was also amended by chapter fifty of the year of 1705.⁸ The slave was to receive thirty lashes if he killed a deer of his own accord, if by the order of his master or other responsible person, such person was to be fined five hundred pounds of tobacco. This was again amended in 1734⁹ by an Act lessening the penalty as follows: Servants or slaves killing deer by order of their masters or overseers were not to be held responsible, but only the person ordering the killing, but if they did it on their own account they were to be punished with fifteen

¹ Henning, Statutes, Vol. III., Chap. xlix, § 34, p. 447.

² Ibid. Vol. II., p. 270, Act. I., 1669.

³ Ibid. Vol. III., p. 447.

⁴ Ibid. Vol. IV., p. 126.

⁵ Ibid. Vol. III., Chap. vi, 1699, p. 179.

⁶ Ibid. Chap. xiv, 1705, p. 276.

⁷ Ibid. Chap. vii, 1699, p. 180.

⁸ Ibid. p. 462.

⁹ Ibid. Vol. IV., Chap. xii, p. 425.

lashes, unless security was given that the fine imposed would be paid in six months. To prevent fraud on the customs it was enacted by the Act of 1730, chapter three,¹ that every servant or slave employed on board a vessel who connived at any such fraud should, upon conviction, receive thirty-nine lashes.

In 1680² negro slaves were forbidden to bear arms. This having been found insufficient, the law was amended in 1705 by chapter forty-nine,³ so that any slave who bore arms without his master's permission was to receive thirty lashes. It was again amended in 1723⁴ so that slaves found carrying arms were to be deprived of them and punished with not more than thirty-nine lashes.

(B) 1748-1775. Negroes had begun to set themselves up as "doctors" and to practice on slaves and others who were credulous enough to employ them, thereby causing the death of many people by poison. To stop this practice it was made a felony without benefit of clergy for any "negro or other slave so to practice," unless it was made evident that the medicine was administered without malicious intent, in which case benefit of clergy was granted. When the medicine was administered with the master's consent this statute did not apply.⁵

For stealing hogs,⁶ slaves were to receive thirty-nine lashes at the public whipping post; if the offense was repeated they were stood with both ears nailed to the pillory for two hours, and were then cut loose. The Act of 1705, chapter fourteen, was repealed. The "Act for Preserving the Breed of Sheep"⁷ forbade any slave, in the counties mentioned in the Act, to take any dog with him from one plantation to another. If he did so, any one meeting him might kill the dog and, on complaint made before a Justice of the Peace, have the slave punished with twenty lashes. This did not apply to a slave taking dogs from place to place as before, by the master's orders for the master's diversion. Chapter five of the Act of 1755⁸ imposed a punish-

¹ Henning, Statutes, Vol. IV., Chap. xii, p. 247.

² Ibid. Vol. II., Chap. x, p. 481.

³ Ibid. Vol. III., p. 447.

⁴ Ibid. Vol. IV., Chap. iv, p. 126.

⁵ Ibid. Vol. VI., Chap. xxxviii, p. 104.

⁶ Ibid. Chap. xli, p. 121.

⁷ Ibid. Chap. xlii, 1752, p. 295.

⁸ Ibid. p. 473.

ment of ten lashes on any slave making a fire in a public warehouse.

After the Revision, laws similar to those of the preceding period, respecting the right of negro slaves to bear arms, were enacted. The Act of 1748, chapter thirty-eight, declared that all negroes, mulattoes and Indians were forbidden to carry weapons, and any found in their possession were to be seized by any person and forfeited to the seizer, and every offender was to receive not more than thirty-nine lashes. But any person living on the frontier was allowed weapons of offense and defense upon obtaining a license from a Justice of the Peace.¹ Any negro, mulatto, or Indian who presumed to raise his hand against a Christian white was to receive thirty lashes² as under the former law.

The marriage of a free white man or woman with a mulatto or negro, whether bound or free was unlawful, and the white man or woman so offending was to be committed to goal for six months and be fined ten pounds currency, to be paid to the parish. And the minister performing such a marriage was to forfeit ten thousand pounds of tobacco.³

§ 7. TRIALS OF SLAVES.

In the Calendar of State Papers there is an entry under date of 1672⁴ which would seem to show that slaves had the benefit of the jury system, as it mentions that six jurymen were summoned to try a slave for the murder of a fellow slave. This rather doubtful advantage was done away with by statute in 1692,⁵ when an Act was passed constituting a tribunal for the trial of slaves. It provided that any slave accused of a capital offense should be confined in the goal of the County where the offense was committed. The Sheriff was then to notify the Governor who thereupon was required to issue a "Commission of Oyer and Terminer" to try the accused without a jury, and if found guilty, to punish him according to law. This was amended by the Act of 1705, chapter eleven.⁶ This Act provided

¹ Henning, Statutes, Vol. VI., p. 104.

² *Ibid.* § 20.

³ *Ibid.* Chap. vii, 1753, p. 356.

⁴ Vol. I., p. 8.

⁵ Henning, Statutes, Vol., III., Chap. iii, p. 102.

⁶ *Ibid.* p. 269.

that slaves guilty of capital offenses should be imprisoned, and publicly tried by the Commission of Oyer and Terminer, the defense to be confined to matters of fact and might be conducted by the owner. If the slave was condemned and executed his owner was to be indemnified. This was re-enacted by chapter four of the Act of 1723.¹ In these trials slaves were given the benefit of witnesses and there appears to have been some trouble taken to obtain them. There was a petition in 1691, that proclamation be made for evidence against a mulatto slave, "so that he be either discharged, or should such evidence appear, be prosecuted as ye law directs."² In 1705, negroes and mulattoes were made incapable of being witnesses in any case whatsoever.³ In the case of slaves tried for plotting insurrection or murder, negroes and slaves were competent witnesses according to the Act of 1723, chapter four,⁴ and negroes, not Christians, guilty of perjury were to be punished by having one ear nailed to the pillory for an hour, and then cut off; then the other ear to be treated in like manner, and, finally, by receiving thirty-nine lashes. This punishment was to be made known to all such witnesses by the Commissioners before the examination. By the Act of 1732, chapter seven,⁵ negroes, mulattoes and Indians, whether bound or free were declared to be so untrustworthy as witnesses that their testimony should not be received except on trials of slaves for capital offenses under the Statute of 1723, chapter four. In 1718 there was a case of a negro slave who, for want of proper evidence,⁶ was transferred from North Carolina to Virginia to be tried for a murder committed in a Virginia county.⁷

(B) 1748-1775. This period is distinguished for the growth of the feeling that slaves also were men and should be treated accordingly, the result of which was a softening of the severity of the law as regarded punishments.

All slaves "guilty" of any crime punishable with "death or loss of member" were committed to the Common Gaol to

¹ Henning, Statutes, Vol. IV., p. 126

² Calendar of State Papers, Vol. I., p. 30.

³ Henning, Statutes, Vol. III., Chap. xix, §31, p. 287.

⁴ Ibid. Vol. IV., p. 126.

⁵ Ibid. p. 325.

⁶ Probably for convenience of witnesses,

⁷ Calendar of State Papers, 194.

await trial by "the Commission of Oyer and Terminer." The evidence was to consist of "the confession of the offender, oath of one or more credible witnesses, or such testimony of negroes, mulattoes or Indians, bound or free, with pregnant circumstances as to them shall seem convincing without the solemnity of a jury." In order to convict, the decision of the Judges was required to be unanimous, otherwise the prisoner was to be acquitted, and, except in time of insurrection, execution was not to be done until the lapse of ten days after pronouncing sentence. If the accused was found guilty of an offense within benefit of clergy, sentence of death was not to be passed, but he was to be punished by being burned on the hand by the gaoler in open Court, and was to receive such other corporal punishment as the Court might direct. If the crime was manslaughter, house-breaking, at night or in the daytime, and taking property valued at twenty shillings, or if the person convicted had once had the benefit of this Act,¹ he was to be sentenced to death without benefit of clergy. This method of trying slaves, by the appointment of a special Commission, having been found in practice cumbersome and expensive, was amended in 1765, chapter twenty-six.² Instead of requiring that a notice be sent to the Governor or Commander-in-Chief petitioning the appointment of a "Commission of Oyer and Terminer," it was provided that the Governor should include in the warrants appointing Justices, a general commission to them to try all such cases, punishable by death or loss of member, as might arise. The trial was still to be without a jury. A slave convicted of the manslaughter of another slave, was to receive benefit of clergy. The law respecting the trial and outlawry of slaves was amended in 1772.³ Under the former laws on this subject there was great doubt whether slaves convicted of breaking and entering houses at night, without stealing goods, were entitled to benefit of clergy. This Act declared that they *were* except under circumstances which, in a freeman, would constitute burglary. The law as to passing sentence of death was also changed, instead of the unanimous vote of the Judges, as required by the old law,⁴ the con-

¹ Henning, Statutes, Vol. VI., Chap. xxxviii, 1748, p. 104.

² Ibid. Vol. VIII., p. 137.

³ Ibid. Chap. ix, p. 522, February Session.

⁴ Ibid. Vol. VI., Chap. xxxviii, 1748, p. 104.

currence of four Judges, being a majority of the Judges before whom the case was tried, was sufficient and requisite. As to witnesses ; negroes, mulattoes and Indians were excluded except in the trial of a slave for a capital offense, and any negro, mulatto, or Indian who should, on the trial, be guilty of perjury was punished by having one of his ears nailed to the pillory and so to stand for one hour, the ear then to be cut off, and the other ear treated in like manner ; and, finally, by receiving thirty-nine lashes at the public whipping post. The witness was to be informed of this punishment for false testimony before he testified. The master of an accused slave might appear for him and defend him. If the slave was convicted and executed the public was to make good his value to the owner as before.

In 1769¹ these laws respecting the punishment of slaves were amended and ameliorated, a sense of natural justice and humanity was breaking through the hard ideas and methods which governed in this matter. The new law recites that, under the old laws for the regulating and punishing of slaves, the punishments inflicted were very often altogether disproportionate to the offense and entirely contrary to all the principles of humanity. Therefore it was in the first place forbidden to castrate slaves for any offense other than a rape or attempted rape of a white woman. In the case of runaways it was provided as before that the "taker up" of a slave disclosing the name of his master, should carry him before a Justice of the Peace, who should give the "taker up" a certificate of the fact. The "taker up" should then deliver the slave to his master and receive the lawful reward in return. If the "taker up" preferred, he was allowed an alternative method ; instead of carrying the runaway before the Justice he might deposit him in the County Gaol, the gaoler of which was to advertise him for a certain time. If within that time the owner did not appear he was to be turned over to the Public Gaol and treated as provided in former Acts. If he was apprehended in the same County in which his master lived he was to be turned over directly to him. The law as to runaways who did not disclose the name of their owners was not changed.

¹ Henning, Statutes, Vol. VIII., Chap. xix, p. 358.

§ 8. PECULIUM OF SLAVES.

Slaves evidently had been permitted to own property, probably after the manner of the "peculium" of the Roman slave, but by the law of 1692 the owner was required to seize and convert all horses, cattle, hogs, and so-forth, bearing the mark of his slave if he would not have them seized and forfeited.¹ By the Act of 1705, chapter forty-nine,² it was enacted that such animals should be seized and sold for the benefit of the parish.

Any business dealings with slaves on their own account were strictly prohibited. That all the legislation on this subject is not extant is apparent from an entry in the "Calendar of State Papers"³ of Virginia, which states that one Thomas Hill was sued for trading with negroes contrary to law. Up to this date, 1660, there is no such Statute mentioned in Henning. By the forty-ninth chapter of the Act of 1705,⁴ trafficking with slaves was expressly prohibited under penalty, for the first offense, of imprisonment for one month, and until bonds were furnished in the sum of ten pounds for good behaviour for one year; a second offense was a breach of the bond, the penalty being a forfeiture of four times the value of the thing transferred. If the bond was not promptly forthcoming the offender received in lieu of it thirty-nine lashes. This law was re-enacted in 1748,⁵ and again in 1753,⁶ chapter seven; and in 1769, by chapter nineteen, even having business relations with his own slave was forbidden to a master. Some owners were in the habit of allowing their slaves to go at large and trade as freemen upon payment to their masters of stipulated wages. It was thought that this gave rise to many evils and it was therefore prohibited.⁷

§ 9. MISCELLANEOUS LAWS RELATING TO SLAVES.

Slaves seem to have been employed in positions requiring both integrity and intelligence, for instance as millers, packers

¹ Henning, Statutes, Vol. III., p. 102.

² Ibid. § 35, p. 447.

³ Vol. I., p. 3.

⁴ Henning, Statutes, Vol. III., p. 447.

⁵ Ibid. Vol. V., Chap. xiv, p. 547.

⁶ Ibid. Vol. VI., p. 356.

⁷ Ibid. Vol. VIII., p. 358.

and weighers. In 1705 we find a statute providing that slaves running a mill, who should refuse to grind the grain in the order in which it was brought, or who ground it insufficiently, or exacted excessive toll, were to receive thirty lashes for the first offense, forty for the second, and for the third offense the master was to be held liable to pay for the grain.¹ By chapter nine of the Act of 1732, it was provided that slaves employed "to pack, repack and prise" tobacco were to be punished for any neglect of their duty.²

Slave-stealing seems to have been an exceedingly grave offense, and was visited with extremely heavy punishment. By the Act of 1732, chapter six,³ it was declared that any person stealing a negro, mulatto or Indian slave "shall be a felon, and shall suffer death without benefit of clergy." After the Revision this extremely severe law was re-enacted almost unchanged.⁴

In 1705⁵ was passed the first law declaring that all negro, mulatto and Indian women who were not free, should be tithable. In order to encourage the settling of certain towns, lately created ports of entry, exemption was granted to settlers from the tax on tobacco, and also from the poll tax, slaves excepted, for fifteen years after the twenty-fifth of December 1708.⁶

§ 10. EMANCIPATION OF SLAVES.

(A) 1620-1748. Exactly when free negroes first appeared in the Colony seems to be unknown, but it must have been some time before 1660. We find no mention of emancipation in the Statutes or other papers until 1667, when the belief previously adverted to, that baptism *ipso facto* freed slaves,⁷ was disposed of by the legislative declaration that baptism *did not* free slaves; but the idea had become so firmly rooted that it was found necessary to reiterate this in 1705.⁸

¹ Henning, Statutes, Vol. III., Chap. xli, § 11, p. 401.

² Ibid. Vol. IV., § 13, p. 329.

³ Ibid. p. 324.

⁴ Ibid. Vol. V., Chap. xlv, 1748, p. 547; Vol. VI., Chap. vii, 1753, p. 356.

⁵ Ibid. Vol. III., Chap. vii, p. 258.

⁶ Ibid. Chap. xlii, § 8, 1705, p. 404.

⁷ Ibid. Vol. II., Chap. iii, p. 260.

⁸ Ibid. Vol. III., Chap. xlix, § 36, p. 447.

At least one of the means of conferring freedom was emancipation by last will and testament. There is mention in the Calendar of State Papers¹ of a petition to the Governor by a negro in 1675 for the confirmation of his freedom, granted by will to take effect after eight years service, and also for damages for having been detained beyond that time. The result of the petition is not given. Soon after this, in 1691,² emancipation was restricted. The freeing of any slaves was forbidden under penalty of ten pounds sterling unless, within six months after the emancipation, the former master should provide for the transportation of the freedman out of the Colony. It was again restricted in 1723.³ By this Act freedom was to be conferred only for meritorious services to be allowed by the Governor and Council; slaves otherwise emancipated might, after a residence of one month in a parish, be sold by the wardens, the proceeds to be applied to the use of the parish. In 1710⁴ by an Act of the Assembly a negro slave named Will, who had discovered and disclosed a conspiracy of slaves the year previous, was made free and granted permission to reside in the Colony. By the forty-ninth chapter of the Act of 1705² it was declared that the mere fact of having been in England was not sufficient to confer freedom. It was also enacted that negroes or mulattoes be forbidden to purchase servants of other than their own color, or such as were declared slaves by that Act, any others becoming free *ipso facto* upon the purchase, and the same provision applied to the servants of any owner who should marry a negro or mulatto.

(B) 1748-1775. We have seen that the fact of not having been free in a Christian country, or Christians in their own country, was sufficient warrant for reducing persons to slavery, so we may infer that having been Christians in their own country or free in a Christian country was a sufficient reason for manumitting any enslaved persons. We find a law⁶ explicitly stating, that if any one should sell a person who had been free in a Christian country the vendor should forfeit

¹ Vol. I., p. 9.

² Henning, Statutes, Vol., III., Chap. xvi, p. 86.

³ Ibid. Vol. IV., Chap. iv, p. 126.

⁴ Ibid. Vol. III., Chap. xvi, p. 537.

⁵ Ibid. p. 447.

⁶ Ibid. Vol. VI., Chap. vii, 1753, p. 356.

double the price obtained. This forfeiture could only occur when the victim obtained his freedom. The case of Robin against Hardaway leads us to infer that such was the intention of the law.

If once enslaved the mere fact of having been in England, unsupported by other evidence of manumission, was not sufficient proof of freedom.¹ It was also found necessary again to reiterate that baptism did not of itself confer freedom.² By the Act of 1748, chapter thirty-eight it was forbidden to free a slave except for meritorious services and with the consent of the Governor and Council, any otherwise freed were to be sold again into slavery by the church wardens as before.³

With respect to servants bound for a term of years. If a negro, mulatto or Indian, though Christian, or a Jew, Mohammedan, or other infidel, purchased any Christian or other servant, except of his own color, or such as were by law declared slaves; or if any one of them married a person possessing such forbidden servants, those servants at once recovered their liberty.⁴ Some persons made a regular business of selling indentured servants as slaves, and it was therefore provided that if a man, a second time, sold as a slave an indentured servant of twenty-one years of age or over, such servant should regain full liberty at once; if under twenty-one he should regain his liberty on arriving at that age.⁵ The exact provisions of the Statute were that if any mulatto or other servants bound for a term of years, were sold in the country, or carried out of the country to be sold, the person selling them was to forfeit to the purchaser fifteen pounds over and above the purchase money, and be liable to a further penalty of twenty pounds to any one who should sue for it. If guilty of the same offense a second time, he forfeited the remaining time of the servant who, if under twenty-one years of age, should be bound out by order of the Court, in the same manner as were orphan children, until he should reach that age; if already twenty-one he went free. If the offender was unable to pay the fines he

¹ Henning, Statutes, Vol. V., Chap. xiv, 1748, p. 547; Vol. VI., Chap. vii, 1753, p. 356.

² Ibid. p. 356.

³ Ibid. Vol. VI., p. 104.

⁴ Ibid. Chap. vii, 1753, p. 356.

⁵ Ibid. Vol. VIII., Chap. xxiv, 1765, p. 133.

was held to serve in place of his servant for such time as the servant was originally bound by law. This seems to be the first Act in any way recognizing the just rights of these unhappy victims of avaricious and unscrupulous men. But it goes still further in showing a new-born consideration for those unfortunates. It, in fact, amends the Act of 1753, chapter seven, entitled "An Act for the Better Government of Servants and Slaves." That Act condemned the bastard of a white woman whether free or indentured, by a negro or mulatto, to be bound by the church wardens to serve for thirty-one years. This was now thought altogether too severe, and it was enacted that thereafter males should serve only to their twenty-first year, and females till their eighteenth year. Children of mulatto women bound for thirty-one years, born during the time of service of the mothers were also to serve only twenty-one years if males; if females, eighteen years. There are, in Jefferson's Reports, two cases which illustrate the law very fully. The first, *Gwinn vs. Bugg*,¹ was that of a mulatto named Bugg who brought suit for his freedom against one Gwinn. The facts of the case were as follows: a free Christian white woman between the years 1723 and 1765 had a daughter, Betty Bugg, by a negro. This daughter was bound by the church wardens to serve till thirty-one years of age. Before the expiration of her servitude she was delivered of the respondent Bugg, who was never bound by the church wardens. He was sold by his mother's master to the appellant Gwinn. Being twenty-six he brought suit for the following reasons; first, he himself having never been bound by the church wardens, the master of his mother had no right to his service; second, if he had such right he had forfeited it by selling him to the appellant; third, if both the former points were decided against him, the appellant had, though his failure to provide him with necessaries, forfeited any right he might have had. In the lower Court judgment was rendered for Bugg. On the appeal the judgment was rendered for the appellant Gwinn. The second case was that of *Howell vs. Netherland*.² The plaintiff's grandmother was

¹ Case on Appeal, p. 87, Anno 1769; under the Acts of 1905, Chap. xlix, § 18., 1723, Chap. iv, § 22., 1753, Chap. ii, and 1754, Chap. vii.

² Jefferson's Reports, 90., 1770; under the Acts of 1705, 1723, 1748, and 1753 Chap. ii, § 4 and § 13.

a mulatto, daughter of a white woman by a negro man, born after 1705, and bound by the church wardens, under the law of that date, to serve until thirty-one. After the year 1723, but during her servitude, she was delivered of the plaintiff's mother who, during her servitude in 1742, was delivered of the plaintiff, and he was sold, by the person to whom his mother was bound, to the defendant who claimed his services until he should be thirty-one. The points in this case are similar to those in *Gwinn against Bugg*: "1° that if he could be detained in servitude by his first master yet he could not be aliened: 2°, that he could not be detained in servitude." The case was adjudged in favour of the defense without argument by the defendant's counsel.

§ 11. FREEMEN.

(A) 1620-1748. It was probably very soon after they were imported into Virginia that negroes became divided into the two classes of freemen and slaves. Negroes were also divided on other lines than those; they were distinguished as negroes and mulattoes, the latter of which included as well half-breed Indians as half-breed negroes. The first mention of negroes in the governmental archives was in 1630, when the following strange sentence was pronounced by the Governor and Council on a white man named Hugh Davis who was sentenced "to be publicly whipped before an assemblage of negroes and others" for having had intercourse with a negress.¹ In 1659 there was a similar case.² And in 1662,³ a double fine was imposed for fornication with a negro. Later, it was made an offense punishable by banishment for a white person to marry or cohabit with a negro,⁴ and in 1705⁵ this was amended so that the punishment should be imprisonment for six months, and a fine of ten pounds sterling, while the minister marrying them was fined ten thousand pounds of tobacco, nearly two-thirds of his yearly salary. We have already seen the punishment visited on white women for having illegitimate children by

¹ Henning, *Statutes*, Vol. I., p. 146.

² *Ibid.* p. 552.

³ *Ibid.* Vol. II., Chap. xii, p. 170.

⁴ *Ibid.* Chap. xvi, 1691, p. 86.

⁵ *Ibid.* Vol. III., Chap. xlix, p. 447.

negroes or mulattoes. From all of which it would seem that the talk about "natural antipathy," with regard to mingling the two races, has but slight foundation in fact, and is rather to be attributed to class prejudice.

The first law we find relating to negroes was passed in 1639.¹ It enacted that all persons except negroes should be provided with ammunition. After that there is no legislation extant with regard to them until the Act providing for free trade with all nations at peace with England.²

It seems that negro women as well as other women had been exempted from the poll tax, therefore an Act was passed in 1668³ declaring that they, in order to distinguish them from English women, should no longer be so exempted. In 1680⁴ negro children were exempted from taxation until their twelfth year and white children, those of servants, until their fourteenth year. Finally,⁵ all free negroes above the age of sixteen were declared tithable. As to owning servants; as we have already seen⁶ negroes were forbidden to purchase any servants other than of their own colour or such as had been declared slaves, all others becoming free on purchase by them, or even by the marriage of a negro with a white owning such other servants. This prohibition was first enacted in 1660,⁷ the first Act intimating the existence of free blacks in the Colony.

Formerly, negroes had been admitted as witnesses in the Courts of the Colony, but in 1705, as we have already seen,⁸ they were disqualified. Later,⁹ however, they were again allowed to be called as witnesses in trials for insurrections, etc. The Act of 1732, chapter seven, says that at that time, negroes, mulattoes and Indians had been frequently admitted as witnesses in the General and other Courts of the Colony, when professing to be Christians and being able to give some account of the Christian religion. But as they were considered to be of "such base and corrupt natures" that their testimony was not

¹ Henning, Statutes, Vol. I., Chap. x, p. 226.

² See p. 14, note 2. In text.

³ Henning, Statutes, Vol. II., Chap. vii, p. 267.

⁴ Ibid. Chap. vii, p. 479.

⁵ Ibid. Vol. IV., Chap. iv, 1723, p. 126.

⁶ See p. 49, Note 5. In text.

⁷ Henning, Statutes, Vol. II., Chap. v, p. 280.

⁸ See p. 44, note 3. In text.

⁹ See Ibid. note 6. In text.

credible, and some juries entirely rejected it, therefore they were not thereafter to be admitted as witnesses except on the trial of slaves for capital offenses.¹ It was soon found that this law was inconvenient to the highest degree, as under it, free negroes, mulattoes, and Indians were enabled to escape punishment whenever the only witnesses were negroes, mulattoes, and Indians; and it was therefore enacted² that all free negroes, mulattoes, and Indians who were Christians should be received as witnesses in all cases against other negroes, mulattoes, and Indians, whether free or slave.

By the Act of 1732, chapter seven,³ it was provided that free negroes, mulattoes, and Indians convicted of an offense within the benefit of clergy were not to suffer death, but should be punished in the same manner as were whites, that is, by being branded in the hand in open Court by the jailor and suffering such other punishment as the Court should see fit to order, except that when convicted of manslaughter, house-breaking, or the taking of goods to the value of five shillings, and having once had the benefit of this Act, they should be put to death. They⁴ were, for presuming to raise a hand against a Christian white man, to be punished with thirty lashes as before mentioned. The Colonists seemed to be decidedly opposed to free negroes since they put such heavy restrictions on emancipation, as we have just seen,⁵ but were tolerant of them, at least to the extent that, being already free, they would not permit them to be enslaved.⁶

As to the right to hold office, it was enacted in 1705⁷ that negroes should be incapacitated from holding any office whatever, whether civil, military, or ecclesiastical, and a penalty of five hundred pounds sterling was attached to the occupying of any office, however obtained, with a further penalty of twenty pounds sterling for every month they acted as officers; and in 1728⁸ it is stated, in the "Calendar of State Papers," that the Surveyor of Essex and Spotsylvania Counties found it

¹ Henning, Statutes, Vol. IV., p. 325.

² Ibid. Vol. V., Chap. xiii, 1744, p. 244.

³ Ibid. Vol. IV., p. 325.

⁴ Ibid. Vol. III., Chap. xlix, 1705, p. 447.

⁵ See p. 49, note 2 and 3. In text.

⁶ See p. 49, note 6; also p. 50, note 5. In text.

⁷ Henning, Statutes, Vol. III., Chap. iv, 1705, p. 250.

⁸ Vol. I., p. 214.

necessary to vindicate himself from certain charges of malfeasance in office, one of which was that he had employed negroes as chain-bearers. As to the voting franchise; we find that to have been granted to all freemen by the First Charter;¹ the Act of 1654-5, chapter seven,² confined it to tenants, but by the Act of 1655-6³ it was again granted to all freemen, and so in the subsequent Acts of 1657-8,⁴ chapter ninety-three, and 1676,⁵ chapter six. By the Act of 1723,⁶ chapter four, it was enacted that "no free negro, mulatto, or Indian whatsoever shall hereafter have any vote at the election of Burgesses, or any other election whatsoever." So, evidently, up to 1705, free negroes had the right to hold office, although it is more than doubtful whether they ever had the opportunity to exercise that right unless as chain-bearer to a Surveyor or some other such office. And we also see, that up to 1723, they possessed the voting franchise and, judging from the language of the Statute prohibiting it, they had exercised that right.

Finally, we come to the position assigned to negroes in the militia; and here we find them, as usual, relegated to the useful, but homely office of "hewers of wood and drawers of water." By the Act regulating the training and enlistment of militia⁷ they were exempted from compulsory service, but were allowed to enlist as drummers and trumpeters. But in case of invasion they could be compelled to serve as pioneers "or in other servile labours." And if any exempted persons appeared at muster, except in the cases expressly provided, they were to be fined one hundred pounds of tobacco, or "be tied neck and heels" for not exceedingly twenty minutes. The Act of 1738, chapter two,⁸ provided that all free male persons over twenty-one years of age might be enlisted, but that all negroes, mulattoes, and Indians so enlisted should appear without arms, and be employed as drummers, trumpeters, or

¹ Poore's Constitutions, p. 1890, *et seq.*

² Henning, Statutes, Vol. I., p. 412.

³ Ibid. Chap. xvi, p. 403.

⁴ Ibid. p. 475.

⁵ Ibid. Vol. II., p. 356.

⁶ Ibid. Vol. IV., § 23, p. 126.

⁷ Ibid. Chap. ii, 1723, p. 118.

⁸ Ibid. Vol. V., p. 16.

pioneers, or at some such other "servile labours" as might be necessary. All free negroes¹ who were housekeepers, or enlisted in the militia were permitted to carry arms, but all others were required to dispose of them, except such as lived on frontier plantations, and they were only to be allowed arms on obtaining a license from a Justice of the Peace.

(B) 1748-1775. During this period the laws touching free-men were very much as before the Revision. As we have seen, they were protected from being sold as slaves by the pecuniary penalty and loss of service, though by no criminal action, or action in tort in favour of the victim.² When re-enacted in 1753 there was no change in this respect or, indeed, in any other respect, made in this law.³ Also in 1748 was re-enacted the law which debarred them from owning any one as servant except such as were of their own colour or were declared to be slaves,⁴ and if one of them married a person who owned other servants, the fact of the marriage made such servants free at once. Later, in 1753,⁵ Jews, Mohammedans and other infidels, were classed with them in this regard and the statute included by special mention, Christian negroes, mulattoes, or Indians.

After reciting the legal results of illicit intercourse with negroes or mulattoes on the part of white servants and free women the Statute of 1753⁶ says, "and for a further prevention of that abominable mixture and spurious issue, whatever white man or woman, being free, shall marry with a mulatto or negro, bound or free, shall be committed to gaol for six months and pay ten pounds currency to the parish." The minister officiating at any such marriage was to be fined ten thousand pounds of tobacco.

By chapter twenty-one of the Act of 1748,⁷ all male persons of sixteen and over, all negro, mulatto, and Indian women of like age, and all wives of free negroes, mulattoes and Indians were declared to be tithable. The statute also required the

¹ Henning, Statutes, Vol. IV., Chap. iv, 1723, p. 126.

² Ibid. Vol. V., Chap. xiv, 1748, p. 547.

³ Ibid. Vol. VI., Chap. vii, p. 356.

⁴ Ibid. Vol. V., Chap. xiv, 1748, p. 547.

⁵ Ibid. Vol. VI., Chap. vii, p. 356.

⁶ Ibid. § 14.

⁷ Ibid. Vol. VI., p. 40.

registration of all free male children, and the children of all servants and slaves. Between the time of the passage of this Act and the year 1769 there is, apparently, a great advance in ideas of liberty as regards these races. We find the following, considering all things, astonishing statement in a Statute relieving free negro, mulatto, and Indian women from paying levies. This was done, says the statute, because it was "found very burdensome to some negroes, mulattoes, and Indians, *and is moreover derogatory of the rights of free-born subjects,*" therefore, these and the wives of free negroes, mulattoes, and Indians were exempted.¹

By the Act of 1748, chapter thirty-eight, negroes, mulattoes, or Indians, were forbidden to carry any weapon, and any found in their possession were to be seized and forfeited to the seizer, and every offender was to be punished with not more than thirty-nine lashes. Free negroes, mulattoes, and Indians who were house-holders might keep one gun and the necessary powder, shot, etc., and all, whether bound or free, being on the frontier, were allowed weapons of offense and defense upon obtaining a license from a Justice of the Peace.² In 1755,³ the Statute for regulating and disciplining the militia provided for the enlistment of all men of suitable age, but enacted that all mulatto, negro, and Indian freemen enlisted should appear without arms and "be employed as drummers, trumpeters, or pioneers or in such other servile labour as they shall be directed to perform." Chapter three of the Act of 1757⁴ passed for the same purpose, provided for the enlistment of all males between the ages of eighteen and sixty, imported servants excepted. The free negroes, mulattoes, and Indians were, as before, to be employed without arms and in servile labour.

In the November Session of the year 1769 a law was passed disqualifying negroes, mulattoes, and Indians from voting or being elected to the House of Burgesses.⁵

In order to suppress unlawful meetings and prevent the much-dreaded slave insurrections, any white man, free negro, mulatto, or Indian found in the company of slaves at any un-

¹ Henning, Statutes, VIII., Chap. xxxvii, p. 393.

² Ibid. Vol. VI., Chap. xxxviii, 1748, p. 104.

³ Ibid. Chap. ii, p. 530.

⁴ Ibid. Vol. VII., p. 93.

⁵ Ibid. Vol. VIII., Chap. i, p. 303.

lawful meeting, or who should "harbour or entertain a slave" without the owner's consent, was to forfeit fifteen shillings or one hundred and fifty pounds of tobacco to the informer, or receive twenty lashes.¹ For raising his hand against a white man, the free negro, mulatto, or Indian was, as before, punished with thirty lashes.² Chapter five of the Act of 1755 imposed a fine of forty shillings on any free person making a fire in a public warehouse.³

Free negroes, mulattoes, and Indians might be witnesses at the trial of a slave charged with a crime punishable with death or loss of member,⁴ but were excluded in other cases, except that being Christians they could testify against any other negro, mulatto, or Indian in any case whatever. If, on the trial of a slave, they were guilty of perjury, they were punished by having one ear nailed to the pillory and there to stand for one hour; the ear then was cut off, and the other ear treated in like manner as the first and, finally, they received thirty-nine lashes at the public whipping-post. This penalty was to be made known to the witness before receiving his testimony. Any negro, mulatto, or Indian not a Christian, found guilty of perjury on the trial of a slave for hog-stealing was to receive the same punishment as the slave would if convicted; that is, thirty-nine lashes at the public whipping-post for the first offense; for the second, to have both ears nailed to the pillory for two hours, and then cut loose; and for the third, to be punished as a felon, without benefit of clergy.⁵

¹ Henning, Statutes, Vol. VI., Chap. xxxviii, 1748, p. 104.

² Ibid. § 20.

³ Ibid. Vol. VI., Chap. v, p. 473.

⁴ Ibid. Chap. xxxviii, 1748, p. 104.

⁵ Ibid. Chap. xli, p. 121.

CHAPTER III.

THE INTERREGNUM, 1775-1776.

This chapter covers the period of transition from the old or Colonial Government to the new or Commonwealth Government. During this period the Colonists had not yet severed their connection with the Crown of England; they were still subjects of the King, but in rebellion, warring for their rights and the rights of all men, as afterwards set forth in the Declaration of Independence. During this period there were very few laws enacted, and those of course largely related to defense and to the creation of a new Government, the old having been overthrown and the Royal Governor expelled. The Colony, represented by delegates from the several Counties, met in Convention at Richmond and passed the necessary "ordinances." The laws relating to private property were continued. The first Ordinance¹ passed looked to the raising of troops, in addition to those already organized, for the defense of the Colony. The Ordinance reciting the grievances under which the people were suffering mentioned, among other things, that the Royal Governor, Lord Dunmore, had attempted to infringe "the rights and liberties" of the Colonists by declaring their servants and slaves free and by arming them to fight against their masters. The Virginia forces were increased to nine regiments. The Ordinance forbade the enlistment of any servant, or of any apprentice, unless the latter had the written consent of his master. In order to intimidate the slaves and prevent them from escaping to the enemy, another Ordinance establishing "a mode of punishment of the enemies of America in the Colonies,"² provided in one of its sections for the disposal of any slaves who were taken in arms against the Colony or in the possession of the British. The Committee of Safety was given full power to transport such slaves to any of the "foreign West Indies," and there sell them, the money thereby obtained to be used in pur-

¹ Henning, Statutes, Vol. IX., Chap. i, Dec. 1775, p. 75.

² Ibid. Chap. v, p. 101.

chasing arms. If they could not be transported they were to be disposed of for the use of the Colony in some other manner, returned to their owners, or otherwise dealt with according to the Act for punishing the capital offenses of slaves, the owner to be paid the full value of all such as were disposed of in the last mentioned manner.

In the next year, 1776, "the Constitution or form of Government of Virginia"¹ was drawn up by the delegates and Representatives of the several Counties and Corporations of the Colony in Convention and was adopted unanimously June 29, 1776. Reciting the reasons for forming a Government for Virginia, among others it was declared that as the King had prompted "our negroes to rise in arms among us ; those very negroes whom by an inhuman use of his negative, he hath refused us permission to exclude by law, therefore the Government of the Colony as formerly exercised under the Crown of Great Britain is TOTALLY DISSOLVED."

¹ Henning, Statutes, Chap. ii, May 1776, p. 117.

CHAPTER IV.

THE COLONIAL CHURCH AND THE NEGRO.

As the relation of the Church to the people of a country is a matter of great importance we will examine the attitude of the Colonial Church towards the Coloured Race in Virginia, during the period already treated. It will be necessary first to give an idea of the organization and Government of the Church in order to understand the work it had to perform and to appreciate the progress it made.

The Church in Virginia was the Anglican Church and, as in the mother country, was established by law. It was governed by the Bishop of London in fact, although according to the opinion of the English Attorney-General, delivered in 1725, it was not legally under his jurisdiction.¹ At first the Bishop exercised his authority over the clergy directly, but at the end of the seventeenth century he appointed a "Commissary" who was stationed in the Colonies and was in authority over the clergy as the representative of the Bishop. The clergy in the Colony were required to have certificates from the Bishop of London,² and as a rule came directly from England, though occasionally clergy from the other Colonies were found.

As to the efficiency of the clergy there are conflicting accounts. On the one hand they were declared to be earnest, God-fearing men, struggling successfully against almost insurmountable obstacles, both moral and physical, and suffering insult and calumny and in many cases the most violent and bitter opposition. On the other hand they were denounced as a lazy, vicious and worthless set, and it was asserted that the majority of them at least had "left their country for their country's good." The facts appear to be that while there were some who were all that could be desired as ministers of the Gospel, and to whom Virginia owes incalculable benefits, there were others who were shamefully prominent as habitual

¹ Centennial Council, Diocese of Va., 1785-1885, p. 46, *et seq.*

² Historical Collection of the American Colonial Church, Va., p. 2.

roisterers and roués even in an age of general laxity of habits and morals. M. Blair, the Commissary, in a letter to the Bishop of London¹ mentions the trial of a minister for fornication with a mulatto woman, and Mr. Moreau in a letter to the Bishop of Litchfield in 1697 said, that the clergy did not observe the discipline or canons of the Church, that they were made up mostly of poorly educated men of life and conversation "fitter to make heathens than Christians." And again, that "several ministers have caused such scandals of late and raised such a prejudice that people can hardly be persuaded to take a minister into the parish."²

Their salaries and the accommodations afforded them generally, were greatly complained of by the clergy. In the instructions issued to Sir William Berkeley when appointed Governor in 1650, was a command that he should see to it that every parish had a minister, and that when it possessed one it should "build a parsonage and add thereto over and above his (the minister's) usual pension³ 200 acres of gleable land" for the cultivation of which the parishioners had to give some days of their own and their servant's labour.⁴

The ministers were placed in charge of their parishes by two methods; one was for the vestry to present the minister to the Governor for induction upon which he became a life incumbent; the other method, and the one more generally observed because of the indifferent reputation of the clergy, was for the parish to receive a minister without induction and continue him from year to year giving him no title to the living and keeping him absolutely at their will and under their control. In the many parishes of Virginia there were, according to a clergyman stationed there, but three ministers inducted into their livings, all the others being simply continued at the will of the vestries. The effect of this is seen from the following extract:—"This same precariousness is a great restraint on their ministers' freedom in reproof of vice either in public or in private, *being afraid to disoblige any of the gentlemen of their vestry.*"⁵ The clergy complained greatly of

¹ Historical Collection of the American Colonial Church, Va., p. 362.

² Ibid. p. 30.

³ Tobacco to the value of about £80 per annum.

⁴ Historical Collection of the American Colonial Church, Va., p. 1.

⁵ Ibid. p. 259.

the smallness of their salaries which were made up of a grant from the Colony, of so many pounds of tobacco per annum, at the rate of twelve shillings per hundred pounds, a rate very much higher than the market value, and of glebe lands some of which were withheld from the ministers, others of which had neither houses nor other improvements upon them and were not worth above forty or fifty shillings per annum at the best, while in some parishes there were no glebes at all. All these, as before stated, were held, with but two or three exceptions, from year to year at the will of the vestry.¹ The presentation of this complaint to the Assembly was almost immediately followed by an Act fixing the salary of the clergy at sixteen thousand pounds of tobacco and perquisites, and ordering the parishes to purchase glebes and furnish them for the use of their ministers.

One of the means taken by the Commissary² to find out the condition of the negroes in the Colony was to include, among some "queries" sent to the clergy for the purpose of ascertaining the condition of the Church throughout the Colonies the following question:³ "Are there any infidels bound or free within your parish, and what means are used for their conversion?"

The answers to this question fully illustrate the situation, and the stand taken by the whites on the subject of the improvement of the negro race. The question was sent out in 1724, the answers were returned by ministers who had been from a few months to a quarter of a century in the Colony and sometimes in the one parish. The answers were as follows:

Westminster Parish, (Incumbent one year.) "No, excepting negroes and mulattoes. My means for their conversion is preaching and catechising."

St. Paul's Parish, (Incumbent fourteen years.) "I have no Indians in my parish. The negroes (when their masters desire

¹ Henning, Statutes, Vol. III., p. 151.

² "The Council for Foreign Plantations in England directed a letter to Sir Wm. Berkeley, Governor 'for the time being' and the Virginia Council in which they enjoined that all religious exercises should be according to the profession of the Church of England, and that they should encourage learned and orthodox ministers, for it was a shame for a rich and flourishing people to be without a ministry proportionate to the population, and such a ministry was necessary to the winning of the souls of those whom they had purchased as slaves."—Virginia Carolorum (Niell), pp. 282 and 283.

³ Historical Collection of the American Colonial Church, Va., p. 261 *et seq.*

it,) are baptized when they can say the Church catechism."

James City Parish, (Incumbent two years.) "I can't say we have any freemen infidels, but our negro slaves imported daily are altogether ignorant of God and Religion and in truth have so little docility in them that they scarce ever become capable of instruction, but My Lord I have examined and improved several negroes, natives of Virginia; and I hope in God that by a due observance of the directions for the catechists, etc., printed by order of the Society for the Propagation of the Gospel in Foreign Parts I shall labour to plant that seed among them which will produce a blessed harvest."

Bristol Parish, (Incumbent thirty years.) "None that I know of, except negro slaves and a few Indian servants. I have several times exhorted their masters to send such of them as could speak English to Church to be catechised, but they would not. Some masters instruct their slaves at home and bring them to baptism, but not many such."

Saint Peter's Parish, (Incumbent a year and nine months.) "We have no infidels that are free, but a great many negro bond slaves. Some of which are suffered by their respective masters to be baptized and to attend on divine service, but others are not."

Westover Parish, (Incumbent eight years.) "There are none of the latter, especially of those who profess the Church of England worship, but many of the former and I take all opportunities, both public and private, to exhort all masters and mistresses to instruct their slaves in the principles of Christianity at home and to send them to Church to be examined and instructed by me during the time of the catechistical exercises which I begin in April and continue every Lord's day to the latter end of June."

Hinger's Parish, (Incumbent three years.) "There are infidels both bond and free. No other means used throughout the Colony but ordinary preaching."

Newport, (Incumbent ten years.) "Both bond and free, and for their conversion, baptism after instruction."

Stratton Major, (Incumbent fourteen years.) "Generally negroes are unbaptized. They that desire it have it, the Church is open to them all."

Wilmington, (Incumbent eight years and six months.) "The white people who are generally natives of Great Britain or Ireland or their dependents are Christians. The negroes who are slaves to the whites cannot, I think, be said to be of any religion for as there is no law of the Colony obliging their masters or owners to instruct them in the principles of Christianity and so they are hardly to be persuaded by the minister to take such pains with them by which means the poor creatures generally live and die without it."

Blissland Parish, (Incumbent twenty-one years.) "None but negro slaves most of whom are not capable of instruction. Those that are, and children, my own and many others, I have instructed and baptized."

York Hampton Parish, (Incumbent three years.) "I know of no infidels in my parish except slaves. I exhort their masters to send them to me to be instructed, and in order to their instruction I have set apart every Saturday in the afternoon, and catechise them at my glebe house."

Christ Church Parish, (Incumbent twelve years and four months.) "A great many black bond men and women infidels, that understand not our language nor me theirs. Not any free. The Church is open to them, the word preached and the sacraments administered with circumspection."

South Farnham, (Incumbent twenty-four years.) "The infidels in the parish are slaves. The means for their conversion is divine service performed at Church every Sunday which few of them attend to."

Petsworth, (Incumbent twenty-four years.) "I have no Indians in my parish, but those several infidels, negro slaves brought from Africa, such as are born in this country their masters very often bring them to the Church or minister to be further instructed that they may be baptized, and many are so."

Lawn's Creek, (Incumbent twelve years.) "There are some Indians bound and free and some negroes bound and free. Some masters will have their slaves baptized and others will not by reason that they will not be sureties for them in baptism. If the slaves live not afar off they come to Church and Chapel."

Washington Parish, (Incumbent "almost three years.") "There are no infidels within my parish except negro slaves, some of whom being duly instructed I have admitted to baptism and to the Lord's supper."

Elizabeth City Parish, (Incumbent five years and eight months.) "There are many infidels though very few here. The owners are generally careful to instruct those that are capable of instruction and to bring them to baptism, but it is impossible to instruct those that are grown up before they are carried from their own country, they never being able either to speak or understand our language perfectly."

Upper Parish of the Isle of Wight, (Incumbent fourteen years.) "There are negroes, but as soon as they are capable they are taught and baptized by the care of some masters, but this is too much neglected by many."

Christ Church Parish, Middlesex, (Incumbent twenty-four years.) "No free infidels, but several slaves, some few that have been born here when of teachable disposition and their masters allowing them time to come to me, upon instruction and examination have been publicly baptized and also some children of such who have had baptism, some also every Sunday attend Church."

Burton or Williamsburg Parish, (Incumbent thirty-nine years.) "No infidels but slaves. I encourage the baptizing and catechising of such of them as understand English and exhort their masters to bring them to the Church and baptize the infant slaves when the master or mistress become sureties."

Accomako Parish, (Incumbent sixteen years.) "There are very few of the natives, but a great many negroes who come to church, of such I have baptized since I came about two hundred, and instruct them at their master's houses."

St. Stephen's Parish, ("came over with Governor Drysdale.") "As in other places."

Henrico Parish, (fourteen to fifteen years Incumbent.) "There are that are bound, but their masters do no more than let some of them now and then go to Church for their conversion."

Southwark Parish, (Incumbent sixteen years.) "As to the negro slaves there are some of their masters on whom I do

prevail to have them baptized and taught, but not many."

Arlington Parish, (Incumbent eight years.) "The major part are infidel slaves, I know none free. No other method but the public preaching at the Church, their masters allowing them no other time."

Saint Mary's Parish. (Incumbent twenty years.) "Only negroes, particular means discouraged."

Overmorton Parish. (Incumbent thirteen years.) "There are no Indians nor other infidels among us but negro slaves, the children of whom and those of them that can speak and understand the English language we instruct and baptize if permitted by their masters."

Saint Anne's Parish. (Incumbent fifteen years.) "No Indians live in my parish, there may be six free negroes, there are many negro slaves and but very few baptized nor any means used for their conversion, the owners generally not approving thereof being led away by the notion of their being and becoming worse slaves when Christians."

Thomas Dell, in a letter to the Bishop of London, dated June 1, 1724, says:¹ As to infidels in bonds or negroes, their masters will not, I have reason to believe, afford them time from their worldly service to attend that of our common Master and Savior Jesus, and except they and the Indians had horses lent, or their zeal would carry them on foot, because of the remote distances, there will be occasion of good laws of the country, to second and back their endeavours." Mr. Forbes in "An Account of the State of the Church in Virginia" addressed to the Bishop of London,² says: "there are infidel slaves (viz:) negroes which, as soon as they are capable, are taught and baptized by the care of some masters, but too much neglected by many." "A proposition for encouraging the Christian Education of Indian, negro and mulatto children"³ recites the neglect of the owners in providing the Christian instruction of their slaves. It proposed therefore that each negro, mulatto or Indian child who was able at fourteen to recite the Creed, the Lord's Prayer and the Ten Commandments should be exempt for four years from the levies. Mr.

¹ Historical Collection of the American Colonial Church, Va., p. 253.

² Ibid. p. 316.

³ Ibid. p. 344, annum 1724.

Lang, to the Bishop of London, February 7th, 1725 :¹ "Some people are fond of bringing their negro servants to baptism, how soon they are capable to rehearse the Creed, the Lord's Prayer and Commandments, and yet these live together afterwards in common without marriage or any other Christian decency as pagan negroes do who never were entered into the Church membership."

As before mentioned there was prevailing more or less generally throughout the Colonies an erroneous idea that to make a slave a Christian was in fact to free him. This was declared by several Assemblies not to be the case.² This erroneous idea, coupled with the belief held by others that to make a Christian of a slave was to spoil him, and that while having the semblance of men they were really beasts, accounts for the trouble the missionaries met with, nevertheless they made many converts and baptisms. Mr. Gavin, to the Bishop of London in 1738, said that in his first journey through his parish, which was situated in the mountains, he baptized two hundred and twenty-seven whites and one hundred and seventy-two blacks. Going back to the beginning of the Colony there is mention of the baptism of a negro child William, at Elizabeth City in 1624, probably the first in the Colony.³ The earliest baptismal registers, just after 1660, were "full of the baptisms of negro children intermixed with whites and often outnumbering them,"⁴ but a minister reporting in 1712, states that it was with great difficulty that he persuaded the owner to let him baptize three of his slaves.

The Society for the Propagation of the Gospel among the whites, Indians, and negroes in the Colonies was chartered by William and Mary. The Virginia Church, being established, did not partake of its care so that "Gibson, the Bishop of London, 1727, made a powerful appeal (to the Colonists) in behalf of the religious education of the negroes" which awakened great interest.⁵ The Society for the Propagation of

¹ Historical Collection of the American Colonial Church, Va., p. 346.

² Henning, Statutes, Vol. II., Chap. III, p. 260 ; Vol. III., Chap. xlix, p. 447 ; Vol. V., Chap. xiv, p. 547 ; Vol. VI., Chap. vii, p. 356.

³ Centennial of the Church in Virginia. Address delivered by P. Slaughter, D. D., at the Centennial Council of the Virginia Diocese, at Richmond, May 21, 1885 ; p. 39.

⁴ Ibid. p. 40.

⁵ Ibid. p. 41.

the Gospel was almost from the beginning a holder of slaves. "We are now, said Bishop Fleetwood, in a sermon before the Society, by the munificence of a truly honorable gentleman, (General Codrington) ourselves become the patrons of at least three hundred slaves."¹ Not only the Society for the Propagation of the Gospel, but the Church in Virginia and the separate ministers themselves in some cases became slave holders. Chapter nineteenth² of the Act of 1734 provides for the purchase of a glebe for Elizabeth River Parish and for the sale of other glebes, the proceeds to be used for the purchase of slaves to be fixed forever to the first named glebe for the benefit of the parson. In 1745 another Act was passed for a like purpose.³ The minister stationed at Saint Anne's Parish says, "I have a house and glebe, and keep servants and slaves to occupy the same, but live upon my own plantation in the parish."⁴ Mr. Gavin in his letter to the Bishop of London⁵ says, "Next to seeing the Episcopacy so little regarded it gives me a great deal of uneasiness to see the greatest part of our brethren taken up in farming and buying slaves, *which in my humble opinion is unlawful for any Christian and in particular for a clergyman.*" I emphasize the last words as a striking, though not the only example, of the beginning of that belief which created the Abolitionist of the North during the second quarter of this present century, and which precipitated, if it did not actually bring about, the Rebellion that ended in the complete overthrow of legalized slavery in the United States. If the tithes were not paid the minister had the statutory right of distraining the slaves of the delinquent parishioners.⁶

We have now seen the difficulties besetting the path of those who attempted to care for the spiritual welfare of the negro; in another direction earnest efforts were put forth to benefit him by the establishment of a method of practical education, so to speak, combining mental cultivation with instruction in some branch of industry. Special efforts for his spiritual welfare date back in the seventeenth century and a

¹ The English Church and its Bishops, p. 90.

² Henning, Statutes, Vol. IV., 1734, p. 440.

³ Ibid. Vol. V., Chap. xxvii, p. 390.

⁴ Historical Collection of the American Colonial Church, Va., p. 313.

⁵ Ibid. p. 360.

⁶ Henning, Statutes, Vol. VI., Chap. xxxiv, 1748, p. 88.

companion desire was to cultivate his mind to some extent at least. The scheme seems to have owed its origin to Mr. Commissary Blair, to whom the Church owed so much. But in 1738 the certainty of failure seemed to have become apparent. Mr. Bridges¹ in writing to the Bishop of London expressed the fear that the project would fall through, and in 1754 nothing had been accomplished, and Mr. Commissary Dawson writes to the Bishop recommending that more frequent conventions be held that such things might be attended to.² And that appears to have been the end of it, for we find no further mention of such schools.

¹ Historical Collection of the American Colonial Church, Va., p. 361.

² Ibid. p. 409.

CHAPTER V.

THE NEGRO POPULATION OF VIRGINIA.

For ascertaining the negro population of the Colony we have almost no reliable data. The number of the first importation of negroes in the "Dutch man-of-warre" was twenty, perhaps another was added from a ship from Bermuda which arrived the same year. We learn of the birth of one child in the Colony about 1624, and when the census was taken in 1625 there were only twenty-five negroes in the Colony. The number was increased by births and importations after that, but there nowhere appears any notice of it until 1671, when, according to Niell,¹ Governor Berkeley reported that there were not more than two thousand blacks in the Colony, and that by 1684 they had more than doubled. But Henning² gives the white population of the Colony in 1682, on the authority of Governor Berkeley, at forty thousand, and the negroes at two thousand; he also states that there had been only two or three ship loads of slaves imported in the preceding seven years. Anderson³ says that the population at the beginning of the reign of George I.—circa 1714—was put by Campbell in his history of Virginia, pages 108 to 125, at 95,000 of whom about one-fourth, or 23,000, were negroes. And that in 1756⁴ the whole population had increased to 293,000, of whom 120,000 were negroes, a very large increase in the percentage. It is also stated that about ten thousand negroes were imported during the reign of George I, 1714-1727, a space of thirteen years.⁵ Alexander Spotswood, who was Governor of the Colony from 1710 to 1722, estimated the negroes and other servants above sixteen years of age at more than 120,000; if this is true Campbell's estimate of 23,000 must be very much too small. Governor Dinwiddie whose term extended from 1752 to 1758, estimated the entire negro population at 120,156, nearly as many as the whites who were supposed to number 173,316.⁶

¹ Virginia Carolorum, p. 401.

² Statutes, Vol. II., p. 515.

³ History of the Colonial Church, p. 129.

⁴ Ibid. p. 130.

⁵ Industrial Resources of the Southwest, De Bow, Vol. III., p. 404.

⁶ Virginia Carolorum, p. 401, note 1.

By chapter four¹ of the Act of 1713, it was enacted that the births and deaths of all persons, whether free or slaves, should be registered. Pursuant to this Act the Clerk of the Council made a report² for the year ending April 1714. This shows births of Christian (white) males 17, females 15; negro slaves, males 6, females 5; deaths Christian (white) males 2, females 4; negro slaves, males 1, females 1. This gives the percentage of deaths to births, Christians, males, .11, females, .27; negro slaves, males, .166, females .20. Deaths to births, Christian, .187; negro slaves, .181. Thus showing the death rate among the white males to be less than that of the slave males in proportion to the births, while among the women the figures are very nearly exactly reversed, and the proportion of all Christian deaths to Christian births is about .006 per cent. greater than that of the total negro deaths as compared with negro births, which is a remarkable showing considering the life led by slaves and the greater danger incurred by them from the very severe laws.

In some of the counties the negroes outnumbered the whites almost three to one, as is shown by a petition which was presented in 1727, to have the office of customs removed from the private house of R. Carter, Esq., to Urbannas for various reasons, among which was the proximity of the Bay, and because there were but few inhabitants and of these the blacks were nearly three to one and much more in the more exposed portion.³

¹ Henning, Statutes, Vol. IV., p. 42.

² Calendar of State Papers, p. 176.

³ Ibid. 212.

APPENDIX.

A.

FORM OF GIVING ROYAL ASSENT TO AN ACT OF ASSEMBLY OF
THE COLONIAL GOVERNMENT. (*From a book in the office
of the General Court, labelled Proclam. Book, 1748, p. 2.*¹)

At the Court of St. James's,
The 20th day of March, 1745.

PRESENT :

The King's Most Excellent Majesty,	
Lord President,	Viscount Torrington,
Lord Privy Seal,	Lord Delawar,
Lord Steward,	Lord Bathurst,
Lord Chamberlain,	Lord Hobart,
Duke of Bedford,	Lord Sandys,
Duke of Rutland,	Mr. Vice Chaimberlayne,
Duke of New Castle,	Lord Chief Justice Lee.
Earl Cholmondely,	Lord Chief Justice Willis,
Earl Harrington,	Sir John Norris,
Viscount Cobham,	Sir John Rushout,
George Dodington, Esq.	

WHEREAS by Commission under the Seal of *Great Britain*, the Governor, Council and Assembly, of his Majesty's province of *Virginia* are authorized and empowered to make, constitute and ordain, Laws, Statutes and Ordinances for the Public Peace, Welfare and good government of the said Province ; which Laws, Statutes and Ordinances are to be as near as conveniently may be, agreeable to the Laws and Statutes of this Kingdom, and to be transmitted for his Majesty's royal approbation or disallowance. AND WHEREAS in pursuance of

¹ Henning, Statutes, Vol. V., p. 559.

the said powers an Act was passed in the said province in 1744, which hath been transmitted in the words following, viz.

(Here is inserted a complete copy of the Act submitted.)

AND WHEREAS, the said Act together with a Representation from the Lords Commissioners for Trade and Plantations thereupon have been referred to the consideration of the Committee of the Lords of his Majesty's most Honourable Privy Council for Plantation affairs the said Lords of the Committee did this day Report as their opinion to his Majesty that the said Act was proper to be approved HIS MAJESTY taking the same into consideration was pleased with the advice of his Privy Council to declare his approbation of the said Act and Pursuant to his Majesty's ROYAL Pleasure thereupon expressed the said Act is hereby confirmed finally Enacted and Ratified accordingly whereof the Governor, Lieutenant Governor or Commander in Chief of his Majesty's Province of Virginia for the time being and all others whom it may concern are to take notice and conform themselves accordingly.

W. SHARP.

B.

CERTIFICATE ON OATH OF CAPTURE OF A RUNAWAY SERVANT OR SLAVE. TAKEN FROM THE CALENDAR OF STATE PAPERS OF VIRGINIA.¹

" At a Court held for the proof of publick claims, on the 9th of May, 1726, in King Wm. County, &c., the following claim was submitted under oath, &c. :—

King Wm. County, *ss.*:—I do hereby certify that Martin Slaughter of this County brought before me four runaway Slaves named James, Roger, Guy & Sampson, belonging to M^r. Lewis Burwell of York County, which sd : Slaves he took

¹ Vol. I., p. 209,

up att his own Plantation in this Countey, which pr: my judgment is about forty miles from ye french town, ye place where ye sd: Slaves were kept—

Given under my hand this 23^d day of Sept: 1724."

C.

PROCLAMATION REPEALING CERTAIN ACTS OF ASSEMBLY, PASSED
AT THE REVISAL OF 1748.¹

Virginia, SCT.

By the Hon'ble Robert Dinwiddie, Esqr. his Majesty's Lieutenant-Governor, and Commander in Chief of the Colony and Dominion of Virginia.

A PROCLAMATION for publishing the repeal of several Acts of Assembly, passed in the years 1748 and 1749.

WHEREAS all Laws, Statutes and Ordinances, made and passed in the General Assembly, of this Dominion, are according to the Constitution of this Government, by his Majesty's Letters Patent under the Great Seal of Great Britain, to be transmitted to his Majesty, for his Royal Approbation or Disallowance, and such of the said Laws, Statutes, and Ordinances, as shall be thereupon disallowed or disapproved, and so signified by his Majesty under his sign manual and signet, or by order in Privy Council, are from henceforth to cease, determine, and become utterly void. And whereas his Majesty, in Council has been pleas'd to signify his disapprobation and disallowance of several Acts passed in the years 1748 and 1749, (to wit,)

(Here follow the titles of the several Acts.)

I do therefore, in pursuance thereof, by this proclamation, publish and declare that the said Acts of Assembly, are re-

¹ Henning, Statutes, Vol. V., p. 567.

pealed and utterly void, and of none effect : And for the more solemn signification thereof ; I do appoint the proclamation to be read and published, at the Court House of the several Counties within this Dominion ; and the Sheriffs are to take care the same be done accordingly. Given at the Council Chamber, this eighth day of April, one thousand seven hundred and fifty-two, in the XXV year of his Majesty's reign.

ROBERT DINWIDDIE.

GOD SAVE THE KING.

FINIS.

